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Lifting the Corporate Veil for Directors and Shareholders' Liability: Matters Arising

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Abstract
The doctrine of lifting the corporate veil constitutes the exception to the concept of corporate legal personality, but the ambit of the exception and the appropriate circumstances in which it should apply are contested both in case law and legal jurisprudence. It is far from settled when the corporate veil can be lifted, and no clear guiding principles have emerged in the United Kingdom and other common law jurisdictions such as Nigeria. In recent time, however, the authoritative decision of the UK Supreme Court in the case of *Prest v Petrodel Resources Ltd* introduced new principles of ''evasion'' and ''concealment''. Matters of legal significance do arise from the decision. For instance, in drawing distinctions between the principles of ''evasion'' and ''concealment'' the Court did not clarify beyond legal confusion the factual circumstances in which lifting the corporate veil would be appropriate and necessary. In this article, we examine the law on lifting the corporate veil as it has evolved in case law through the centuries. From a jurisprudential analysis of the judgment in *Prest v Petrodel Resources Ltd*, we examine the matters arising and proffer key suggestions towards striking the optimum balance between the concept of corporate legal personality and the doctrine of lifting the corporate veil.
Keywords: Corporate legal personality, Lifting the veil, *Prest v Petrodel,* Limited Liability, Separate Legal Personality
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Introduction

One fundamental concept of corporate law is the separate legal personality of a registered company which implies that the company is a person in law, distinct from its shareholders and any other persons acting for or on its behalf, such as its directors, officers or employees[1]. A necessary adjunct to corporate legal personality is the limited liability of shareholders of the company as the company's liabilities are its own and not its shareholders' whose liabilities are limited to the amount invested in the company. The seminal case of *Salomon v Salomon & Co Ltd*[2] affirmed the concept of corporate legal personality and its derivative of limited liability. In that case Lord Halsbury LC held that a validly incorporated company must be treated ''like any other independent person with its rights and liabilities appropriate to itself'', and to no other.

In particular, limited liability is considered the primary benefit of the corporate form and the protection of shareholders against personal liability for corporate debts and obligations[3]. It has been economically justified as capable of lowering monitoring costs for shareholders, facilitating the free transferability of shares, allowing for portfolio diversification, and setting appropriate managerial incentives[4]. Hansmann and Kraakman have also argued that limited liability serves the economic purpose of ''entity shielding'' and ''assets partitioning'' in that it ensures that assets owned by shareholders are not available to the company's creditors and *vice versa*[5]. It may appear that for over a century these economic justifications for the concepts of separate legal personality and limited liability have served to maintain the corporate veil which the law draws between an incorporated company and its shareholders, including their respective assets and liabilities.

However, like other fundamental concepts in corporate law[6], through the century the courts have also identified situations or circumstances in which the corporate veil may be lifted for the purpose of holding shareholders liable for the debts or obligations of the company. According to Ramsay and Noakes, this exception to the concepts of separate legal personality and limited liability assume many forms, functions and guises, all of which are complicated by the proliferation of metaphors[7]. The corporate veil, for instance, may be lifted, pierced,

[1] See the landmark cases of *Salomon v Salomon & Co Ltd* [1897] AC 22 wherein the concept was established.
[2] ibid
[3] Timothy P. Glynn, (2004). Beyond "Unlimiting" Shareholder Liability: Vicarious Tort Liability for Corporate Officers, 57 Van. L. REV. 329, 337
[4] Paul Halpern, Michael Trebilcock & Stuart Turnbull, (1980). "An Economic Analysis of Limited Liability in Corporation Law" 30:2 UTLJ 117
[5] Henry Hansmann & Reinier Kraakman, (2000). "Organizational Law as Asset Partitioning" 44:4-6 European Economic Rev 807 at 813-15
[6] For instance, the Majority Rule and Corporate Litigation in the case of *Foss v Harbottle* (1843) 2 Hare 460 and its exception of derivative action. See Babajide S. Shoroye, (2021). Defining the Relationship between the Rules in *Foss v Harbottle* and *Salomon v Salomon*: A Nigerian View, International Journal of Law, Policy and Social Review 3:4, 39-47
[7] Ian M Ramsay and David B Noakes, (2001). Piercing the Corporate Veil in Australia, 19 Company and Securities Law Journal 250-271

peeped behind, penetrated, extended or even just ignored[1]. In the literature authors have mostly adopted the term ''piercing'' or ''lifting'' the corporate veil, perhaps due to Staughton LJ distinction of the terms in *Atlas Maritime Co SA v Avalon Maritime Ltd (No 1)*[2] as follows;

> To pierce the corporate veil is an expression that I would reserve for treating the rights and liabilities or activities of a company as the rights or liabilities or activities of its shareholders. To lift the corporate veil or look behind it, on the other hand, should mean to have regard to the shareholding in a company for some legal purpose.

As presented later in this article, in the course of judicial and academic analysis of the legal issues involved in upholding the concept of corporate legal personality and the appropriate cases where to disregard the concept, it would appear the distinction of Staughton LJ is without much consequential difference[3]. The choice between the terms ''lifting'' and ''piercing'' the corporate veil may also have been influenced merely by phraseological preference according to trends in particular periods in the last decades of the last century. For example, as at 1973 Bray CJ in *Brewarrana v Commissioner of Highways*[4] had considered ''piercing'' the corporate veil as ''now fashionable''. And by 1987, in *Walker v Hungerfords*[5], Bollen J stated that ''lifting'' the corporate veil had become ''out-of-date''.

We argue that the effect of each of the metaphorical terms of ''lifting'', ''piercing'' ''penetrating'', ''looking or peeping behind'' the corporate veil refers to where a court disregards the corporate legal personality of the company and holds a shareholder responsible for the actions of the company as if it were the actions of the shareholder. Therefore, in spite of the terminology adopted (which is ''lifting the corporate veil'' in this article), the consequence of an exceptional circumstance in which the corporate legal personality is ignored or disregarded is almost always the same; the shareholder or the controlling director is fixed with liability for the debts or obligations of the company.

The doctrine of lifting the corporate veil represents the limits to the concept of corporate legal personality but the appropriate limits are contested both in case law[6] and legal jurisprudence[7]. Given the importance of the concept and its effect on the economies of commonwealth jurisdictions, the stakes are high whenever the court hears and decides its acceptable limits. Too high a bar and injustice and fraud may be encouraged, and too low and the entrepreneurial and asset partitioning function of the concept may be impaired[8]. Following *Salomon v Salomon,* the court had lifted the corporate veil in circumstances it deemed appropriate[9], and in other cases it had attempted to lay down principles for lifting the veil[10]. However, from the case law it is far from settled as to when the corporate veil can be lifted; no clear principles on lifting the corporate veil have emerged in the United Kingdom and other common law jurisdictions such as Nigeria.

In recent time, rather than clarify and resolve the unsettled state of the law on lifting the corporate veil, the decision of the UK Supreme Court in the case of *Prest v Petrodel Resources Ltd*[11] introduced new principles of ''evasion'' and ''concealment''. According to the court, the only justification to lift the corporate veil is the abuse of the corporate legal personality of a company. However, the court proposed that abuse of corporate legality personality is only justified for lifting the corporate veil if the controlling shareholders of a company try to evade or frustrate existing legal obligations through the use of the corporate legal personality; and that the corporate veil cannot be lifted in cases of concealment. In any case, the court held that lifting the corporate veil is a remedy of last resort, which means it can only apply when there is no other available legal device to redress the abuse or fraud occasioned by the use of corporate legal personality.

From the current position of the law on lifting the corporate veil, as stated in *Prest v Petrodel Resources Ltd*,

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[1] See S Ottolenghi, (1990). 'From Peeping behind the Corporate Veil, to Ignoring it Completely', 53 MLR 338
[2] [1991] 4 All ER 769
[3] Even though, as we discuss later in this article, the decision in *Prest v Petrodel Resources Ltd* [2013] AC 415 per Lord Sumption, affirmed this distinction.
[4] (1973) 4 SASR 476, 480
[5] (1987) 44 SASR 532, 559
[6] See the cases of *Wallersteiner v Moir* [1974] 1 WLR 991; *DHN Food Distributors Ltd v Tower Hamlets* [1976] 1 WLR 852; *Re a Company* [1985] BCLC 333; *National Dock Labour Board v Pinn and Wheeler Ltd* [1989] BCLC 647; *Adams v Cape Industries Plc* [1990] Ch 433; *Prest v Petrodel Resources Ltd* [2013] AC 415
[7] See for examples, S Griffin, (1991). 'Holding Companies and Subsidiaries—the Corporate Veil', 12(1) Co Law 16; J Lowry, (1993). 'Lifting the Corporate Veil', JBL 41; P Friedman and N Wilcox, (2006). 'Piercing the Corporate Veil', NLJ 56; C Howell, (2000). 'Salomon under Attack', 21(10) Co Law 312; D Petkovic, (1996). 'Piercing the Corporate Veil in Capital Markets Transactions', 15(4) International Banking and Financial Law 41; C Png, (1999). 'Lifting the Veil of Incorporation: Creasey v Breachwood Motors: A Right Decision with the Wrong Reasons', 20(4) Co Law 122; A Walters, 'Corporate Veil' (1998). 19(8) Co Law 226; R Williams and I Lambert, (1999). 'Director's Liability for Corporate Breach', 2 Private Client Business 97
[8] See Alan Dignam and Peter B Oh, Disregarding the Salomon Principle: An Empirical Analysis, 1885–2014. Oxford Journal of Legal Studies, Vol. 39, No. 1 (2019), pp. 16–49
[9] See *Gilford Motor Company Ltd v Horne* (1933) Ch. 935 (CA); *Jones v Lipman* [1962] l WLR 832
[10] In particular, see the cases of *VTB Capital Plc v Nutritek International Corp* [2013] 1 B.C.L.C. 179 and *Prest v Petrodel Resources Ltd* [2013] AC 415
[11] [2013] AC 415

matters of legal significance do arise. For instance, in drawing distinctions between the principles of ‘‘evasion’’ and ‘‘concealment’’ the court did not provide sufficient clarity on the nature and scope of the distinctions. And most importantly, the court did not clarify the principles, nor clarify beyond confusion the factual situations or circumstances in which lifting the corporate veil is appropriate and necessary. In this article, we examine the law on lifting the corporate veil as it has evolved in case law through the centuries. From a jurisprudential analysis of the judgment in the case of *Prest v Petrodel Resources Ltd,* we examine the issues arising therefrom. As our main objective, we attempt to determine the appropriate circumstances and propose a practical approach to lifting the corporate veil.

A. THE CONCEPT OF CORPORATE LEGAL PERSONALITY

The concepts of separate legal personality and limited liability constitute the major attributes of a registered company. Upon registration, the company acquires a corporate legal personality that makes it distinct from its directors and shareholders, and becomes as independent as a natural person with its own rights and liabilities, including the capacity to contract or transact with third parties. The case of *Salomon v Salomon* marked the judicial recognition and affirmation of these attributes of an incorporated company[1]. The case established the judicial precedence for the legal separation and independence of a company and its shareholders such that, when the company acts it does so in its own right and not as agent of its shareholders; the shareholders are not liable for the company’s actions or obligations, nor do they have any proprietary interest in the company’s property[2]. Lord Sumner succinctly explains the legal effect of the concept of corporate legal personality thus:[3]

> Between the investor, who participates as a shareholder, and the undertaking carried on, the law interposes another person, real though artificial, the company itself, and the business carried on is the business of that company, and the capital employed is its capital and not in either case the business or the capital of the shareholders.

The legal fiction of corporate legal personality serves the practical economic purpose of partitioning assets; ensuring that both the company and its shareholders are entitled to their respective assets without having to make such assets available to each other’s creditors. Easterbrook and Fischel offer some principles of economic efficiency which underlie the concept of corporate legal personal, stating that the concept increases funding availability for projects that have positive net values, but carry too much risk in terms of potential to wipe out all of the investor's capital[4]. The authors explain that the existence of corporate legal personality decreases the need for shareholders to monitor the managers of companies in which they invest because the financial consequences of company failure are limited.

The potential costs of operating companies also decrease because the shareholders are able to diversify investments, reduce their risk, while remaining passive in the management of the company[5]. Without the concept of corporate legal personality, a shareholder could lose his or her entire wealth by reason of the failure of the company. Accordingly, shareholders would have a reason to minimise the number of shares held in a company and insist on a higher return from their investments because of the higher risks they face. Consequently, the concept not only allows diversification but permits companies to raise capital at lower costs because of the reduced risk faced by shareholders. In addition, company managers are incentivised to act efficiently and in the interests of shareholders through optimal investment decisions.

For instance, the managers could invest in projects with positive net present values, and can do so without exposing each shareholder to the loss of his or her personal wealth. Otherwise, companies’ managers may reject some investments with positive present values and this would be a social loss, because projects with a positive net present value are beneficial uses of capital[6]. In general, the economic analysis of the benefits of corporate legal personality implies that shareholders are motivated to invest more through companies because they are protected against total loss of their assets; they cannot lose more than their investments in the company in that they are not personally liable for the company’s debts or financial obligations. Thus, any decision as to whether to lift the corporate veil would involve a consideration of the economic consequences for parties to the case and the society at large.

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[1] Prior to this case, corporate legal personality had evolved from of one person or closed joint stock companies during English commercial development aptly reflected in the Companies Act of 1862. For a historical analysis of the development of the concept of corporate legal personality, see Phillip Lipton, 2014, The Mythology of Salomon’s Case and the Law Dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective, Monash University Law Review, 40: 2.

[2] See *Macaura v Northern Assurance Co. Ltd* [1925] A.C. 619; Lee v Lee's Air Farming [1961] A.C. 12

[3] In the case of *Gas Lighting Improvement Co Ltd v Inland Revenue Commissioners* (1923) AC 723 at 740 – 741

[4] F Easterbrook and D Fischel, (1991). The Economic Structure of Corporate Law, 41-44

[5] For the economic analysis of the benefits of corporate legal personality, see also Paul Halpern, Michael Trebilcock & Stuart Turnbull, (1980). "An Economic Analysis of Limited Liability in Corporation Law" 30:2 UTLJ 117; Henry Hansmann & Reinier Kraakman, (2000). "Organizational Law as Asset Partitioning" 44:4-6 European Economic Rev 807 at 813-15

[6] See Ian M Ramsay and David B Noakes, (2001). Piercing the Corporate Veil in Australia, 19 Company and Securities Law Journal 250-271

B. THE DOCTRINE OF LIFTING THE CORPORATE VEIL[1]

In the case of *Salomon v Salomon*[2] Lord Halsbury had opined that the concept of separate legal personality would apply provided there was ‘‘no fraud and no agency and if the company was a real one and not a fiction or myth’’. Thus, while conceptualizing the separate legal personality of an incorporated company and the limited liability of shareholders of such company, the House of Lord recognized that under some exceptional grounds the company and its controlling shareholders may be considered as one and the same; that the fictional veil which is created through incorporation may be lifted in order to identify the real person behind the actions and activities of the company. Therefore, the corporate veil is not cast in iron curtain to provide absolute and impregnable cover for the company in all circumstances.

This exception to corporate legal personality has been judicially acknowledged for a long time and across different common law jurisdictions. Lord Denning, in the case of *Littlewoods Mail Order Stores Ltd v IRC*[3], pointed out that the concept of corporate legal personality does not ‘‘cast a veil over the personality of a limited company through which the courts cannot see. The courts can, and often do, pull off the mask. They look to see what really lies behind’’ As early as 1905, less than a decade after *Salomon v Salomon & Co Ltd* was decided, Justice Sanborn of the United States’ Supreme Court had stated in the case of *United States v Milwaukee Refrigerator Transit Company*[4] that;

> Where the rule of separate legal personality of the company is used to defeat public convenience, justify wrong, protect fraud or defend crime, the rule would be disregarded and the company treated as an association of persons.

There is no doubt that the corporate veil can be lifted, including in cases involving subsidiary companies and the parent company. The concept of corporate legal personality applies with equal force to subsidiary companies in which the parent company is a controlling shareholder. Though the subsidiaries are separate and distinct entities from their parent company, the corporate veil can be lifted for the purpose of treating the subsidiaries and their parent company as a single entity, and holding the parent company liable for the debt or obligation of a subsidiary[5]. However, problems do arise concerning the appropriate factual circumstances which should necessitate the lifting of corporate veil. Whincop has argued that the fundamental problem with the decision in *Salomon v Salomon* is not the concept of corporate legal personality, but that the House of Lords gave no indication of what the courts should consider in upholding the concept and the circumstances in which it should be lifted[6].

In the earliest cases, the courts applied the agency principle. In *Apthorpe v Peter Schoenhofen Brewing Co Ltd*[7], an English company acquired the business and assets of a U.S company but the latter functioned mainly to hold the land as the business was financed and run by the English company. The court held that the U.S company was merely an agent of the English company and therefore, the whole of its profits was liable to be taxed as income of the English company. Smith LJ lifted the corporate veil while holding that a parent company should not be considered distinct from the subsidiary when the heads and brains of the subsidiary’s undertakings were the officers of the parent company.

On similar facts, however, the court refused to lift the corporate veil in *Gramophone and Typewriter v Stanley*[8] as the argument that the subsidiary company in issue was a cloak or a sham for its parent company to escape tax liability was not supported by evidence. In the case an English company held all the shares in a German company and the English company assessed on the monies retained by the German company. The case turned on whether the retained funds should be considered as the gains of a business ‘‘carried on’’ by the English company as opposed to a separate entity. The court held that the fact that the English company owned shares in the German company was not enough to make the business of the German company the business of the English company hence the corporate veil was not lifted for the latter to bear liability for the income tax.

In both cases the courts inferred from the facts and circumstances to lift the corporate veil in *Apthorpe v*

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[1] It is on the UK case law on lifting the corporate veil that this article is based for the reason that it offers more legal scholarship as the leading common law jurisdiction from which others derive judicial guidance and authorities, though necessary references are made to Australia, Canada and the U.S.A. The UK case law presents impressive development of the doctrine of lifting the corporate veil since *Salomon v Salomon* and up to contemporary time, unlike other common law jurisdictions such as Nigeria with case law that is scanty and remained stuck to the basic exception to corporate legal personality as originally conceptualized immediately after *Salomon*. For instance, see the most recent Nigerian cases of *Shoprite Checkers Limited & Anor v A. I. C. Limited* (2020) LPELR-49905; *U.B.N. Plc v Nwankwo* (2019) 3 NWLR (pt.1660) 474; *Jubril v FRN* (2018) LPELR-43993 *Ude v Ottih* (2017) LPELR-44615.

[2] [1897] AC 22

[3] [1969] 1 W.L.R. 1241, 1254; In this case Denning MR expressed the desire to lift the corporate veil but the other two Justices, Sachs LJ and Karminski LJ, were against lifting.

[4] (1905) 142 F. edn. 247

[5] See the judgment of Lord Denning in DHN Food Distributors Ltd v Tower Hamlets London Borough Council [1976] 1 WLR 852

[6] M Whincop, ‘Overcoming Corporate Law: Instrumentalism, Pragmatism and the Separate Legal Entity Concept’ (1997) 15 Company and Securities Law Journal 411, 420.

[7] (1899) 4 TC4

[8] [1908] 2 KB 89

Peter Schoenhofen Brewing Co Ltd and refused in *Gramophone and Typewriter v Stanley*. From the former, it appears that the corporate veil can be lifted on the ground of agency if a subsidiary company is totally under the control of its parent company to the extent that the subsidiary cannot be said to be carrying on its own business independent of its parent. The same would apply in the case of a company and its controlling shareholder. In subsequent cases, the corporate veil was lifted where it was determined from the facts and circumstances that corporate legal personality had been used as a ''device'', ''sham'', or ''façade'' to perpetrate fraud and appropriate wrongful benefits.

Gilford Motor Company Ltd v Horne[1] and *Jones v Lipman*[2] are classic cases where the corporate veil was lifted based on the abuse and fraudulent use of corporate legal personality. In *Gilford Motor Company Ltd v Horne*, the defendant, who was director of a company, was subject to a restraint of trade contractual provisions on leaving the company. However, he incorporated a company to carry on a business in breach of the contractual provisions, and made his wife and an employee as directors and shareholders. Lord Hanwoth determined that ''the company was formed as a device, a stratagem, in order to mask the effective carrying on of business of Mr EB Horne''. And that it ''was clear that the main purpose of incorporating the new company was to perpetrate fraud''. The court lifted the corporate veil and granted injunction against defendant and the company.

In *Jones v Lipman* the defendant had contracted to sell property to plaintiff. Defendant subsequently reneged on the contract of sale, and in an attempt to evade an order for specific performance, he transferred the property to a company which he set up, with him and his solicitors' clerk as the only shareholders and directors. The corporate veil was lifted and an order for specific performance made against defendant and the company. The court held that the company was; ''The creature of the defendant, a device and a sham, a mask which he holds in an attempt to avoid recognition by the eye of equity''. In this case Russell J adopted and applied, as a general rule, the legal reasoning in *Gilford Motor Company Ltd v Horne,* and noted that the principle was to be applied more forcibly in more cases.

But far from forcibly applying the rule, it was rather curtailed in *Woolfson v Strathclyde Regional Council*[3] where Lord Keith stated that the corporate veil could be lifted only where there are special circumstances indicating that the company is a ''mere façade concealing the true facts''. In this case the House of Lords considered the compensation payable on the compulsory purchase of land occupied by the appellant, but held under a company name. Their Lordships declined lifting the corporate veil to allow the principal shareholder of a company to recover compensation for the compulsory purchase of a property which the company occupied. In his judgment Lord Keith expressed doubts whether the ''sham'' or ''façade'' rule as adopted in previous cases could apply in cases where the subsidiary and parent companies are regarded as a single economic unit.

In fact, Lord Keith doubted whether the Court of Appeal, in the case of *DHN Food Distributors Ltd v Tower Hamlets London Borough Council*[4] decided two years earlier, properly applied the principle that it is only appropriate for the corporate veil to be lifted only under special circumstances indicating that the company is a ''mere façade concealing the true facts''. In *DHN Food Distributors Ltd*, Denning LJ warned against blind adherence to *Salomon v Salomon*, lifted the corporate veil pursuant to statutory provisions for compulsory compensation, and treated a group of three companies as one economic unit. Lord Keith's statement that the corporate veil can be lifted only where corporate legal personality is employed as a ''mere façade concealing the true facts'' about the controlling shareholders was adopted and applied in subsequent and notable cases such as *Gencor ACP Ltd v Dalby*[5]*; Trustor AB v Smallbone*[6]; and *Ben Hashem v Ali Shayif*[7]. In the latter case, Munby J referred to Lord Keith's dictum as a ''binding'' and ''definitive'' statement of principle on lifting the corporate veil.

However, in the case of *Adams v Cape Industries Plc*[8] the Court of Appeal considered the use of corporate legal personality as a ''mere façade'', including cases of agency and subsidiary companies as single economic unit, but refused to lift the corporate veil. *Adams v Cape Industries plc* is instructive because it represented the legal position on lifting the veil for over a decade until the Supreme Court decision in *Prest v Petrodel Resources Ltd*[9]. In *Adams v Cape Industries Plc,* the respondent's foreign subsidiaries were into the business of mining and selling of asbestos. The employees of the subsidiaries sought to lift the corporate veil and claimed against the respondents after they became ill as a result of their occupational exposure to the products. Though Slade LJ found that one of the subsidiaries (a special purpose vehicle for the respondent) ''was clearly a façade in the relevant sense'', he held however that it was not sufficient to lift the corporate veil and attach liability to the

[1](1933) Ch. 935 (CA)
[2] [1962] l WLR 832
[3] [1978] UKHL
[4] [1976] 1 WLR 852
[5] [2000] EWHC 1560 (corporate veil lifted)
[6] [2001] 2 B.C.L.C. 436 (corporate lifted)
[7] [2009] 1 F.L.R. 115, para.151 (lifting of corporate veil refused)
[8] [1990] Ch 433
[9] [2013] 3 W.L.R. 1

respondent as a single economic unit with the subsidiaries[1]. His Lordship noted that companies are entitled to organise themselves in groups and expect the courts to apply the concept of separate legal personality as in *Salomon v Salomon*.

Slade LJ further held that except under the provisions of specific statute or contractual document, the fact that a parent company carries on the business of its group in the form of a *de facto* single economic entity would not suffice, without more[2], to give rise to agency relationship for the purpose of lifting the corporate veil. Two key points that emerged from the decision in the case of *Adams v Cape Industries Plc* are: corporate veil can be lifted if the corporate legal personality is a mere façade; and if corporate legal personality indicates agency, the corporate veil can be lifted only under express statutory or contractual provisions. Significantly, Slade LJ ruled that the court is not at liberty to disregard the concept of corporate legal personality ''merely because it considers that justice so requires''. The court refused to lift the corporate veil based on the facts of the case, and did not offer clear principles on the appropriate circumstances to lift the corporate veil. Slade LJ even stated that;

> From the authorities cited to us we are left with rather sparse guidance as to the principles which should guide the courts in determining whether or not the arrangements of a corporate group involve a façade within the meaning of that word as used by the House of Lords in *Woolfson*, 1978 S.L.T. 159. We will not attempt a comprehensive definition of those principles[3].

Subsequent cases did not also attempt any clear or comprehensive definition of the principles to guide the determination on lifting the corporate veil. Three of such cases stand out in relevance because they were cited and applied by the Supreme Court to exemplify its restatement of the law on lifting the corporate veil in *Prest v Petrodel Resources Ltd*. The first is the case of *Gencor ACP Ltd v Dalby*[4] decided at the beginning of this century. In the case the defendant was a director, and in breach of fiduciary duty and for his personal benefit, diverted to himself business opportunities which came to him as a director of the company, and he paid the proceeds from the business to an offshore company which he owned and controlled. The court found that the offshore company was more or less defendant's offshore bank account as it only operated to keep the proceeds. Rimer J lifted the corporate veil of the offshore company and held defendant and the company accountable for the proceeds and profits from the diverted business.

The second case is *Trustor AB v Smallbone*[5], with similar facts and decided a year later. Defendant had been the managing director of the plaintiff, and it was claimed that in breach of fiduciary duty defendant transferred money to a company that he owned and controlled. Plaintiff sought to lift the corporate veil of defendant's company in order to treat receipt of the money by the company as the same as defendant. The court held that there was enough evidence to lift the corporate veil on the basis that defendant's company was a ''mere façade''. Morritt VC noted that impropriety is not enough to lift the corporate veil, but that the court is entitled to do so where a company is used ''as a device or façade to conceal the true facts and the liability of the responsible individuals''. That is, the impropriety must be linked to the use of the corporate structure to avoid or conceal liability for that impropriety.

In the third case of *Ben Hashem v Al Shayif*[6] the court was asked to lift the corporate veil of a company so as to attach its assets in the course of ancillary relief proceedings in a divorce. The court illustrated the wrongful use or fraudulent involvement of corporate legal personality and noted that the case law showed a general acceptance that the jurisdiction to lift the corporate veil was limited, and the consequences were restricted. And that ''reported cases in any context where the claim has succeeded are few in number and striking on their facts''. Accordingly, on the facts of this case the court refused to lift the corporate veil because the claimant could have a possible claim of fraud against the controlling shareholder of the company. Munby J reviewed most of the leading authorities on the law of lifting the corporate veil and summed up thus;

> The common theme running through all the cases in which the court has been willing to pierce the veil is that the company was being used by its controller in an attempt to immunise himself from liability for some wrongdoing which existed entirely dehors the company. It is therefore necessary to identify the relevant wrongdoing – in *Gilford* and *Jones v Lipman* it was a breach of contract which, itself, had nothing to do with the company, in *Gencor* and *Trustor* it was a misappropriation of someone else's money which again, in itself, had nothing to do with the company … But in the present case there is no anterior or independent wrongdoing. All that

[1] In particular, Slade LJ distinguished the case of *DHN Food Distributors Ltd v Tower Hamlets London Borough Council* [1976] 1 WLR 852 in which the corporate veil was lifted and a group of three companies was considered as a single economic unit for the purpose of compensation for loss of business under a compulsory acquisition of the property occupied by the companies for their business.
[2] Slade LJ identified 'motive' as a relevant factor in order to lift the corporate veil on the ground that corporate legal personality is a mere façade, a sham or a cloak, as in the case of *Jones v Lipman* [1962] l WLR 832
[3] [1990] Ch 433, p. 543 at para D-E
[4] [2000] EWHC 1560 (Ch)
[5] (No 2) [2001] EWHC 703 (Ch)
[6] [2008] EWHC 2380 (Fam)

> the husband is doing, in the circumstances with which he is now faced – the wife's claim for ancillary relief – is to take advantage, in my judgment legitimately to take advantage, of the existing corporate structure and, if one chooses to put it this way, to take advantage of the principle in Salomon.

Mundy J stated that in each of the cases the corporate veil was lifted because ''the wrongdoer controlled the company, which he used as a façade or device to facilitate and cover up his own wrongdoing''. And that there was present in the cases the twin features of 'control and impropriety', and that a company was ''used by its controller in an attempt to immunise himself from liability for some wrongdoing which existed entirely *dehors* the company''. It is noteworthy that for over a century, each of the cases on lifting the corporate veil did not follow any clear pattern or adopt a consistent approach. Rather, the courts in each of those cases had merely reviewed and mostly distinguished preceding authorities while inventing its own rationale for lifting or refusal to lift the corporate veil.

Lack of Consistent Principles of Lifting the Corporate Veil

There does not appear to be any consistent principles of lifting the corporate veil. The case law has been long on endorsement of corporate legal personality and short on lifting the corporate veil. The case law lacks a consistent formulation of general principles of lifting the corporate veil where corporate legal personality is employed as a façade or sham. No principles have also been clearly developed along the line of ''fraud'', ''agency'' ''fiction or myth'' as Lord Halsbury pointed out in *Salomon v Salomon*[1]. What does appear is a general reluctance by the courts to lift the corporate veil or ''bypass the company and get into the pockets of the controlling shareholders in order to cover corporate debts''[2]. Through the decades legal scholars have bemoaned the reality that the case law ''is impossible to rationalize and that this area of law suffers from a potentially costly lack of predictability''[3].

Many decades ago, Ballentine had noted that in cases of lifting the corporate veil ''the formulae invoked usually give no guidance or basis for understanding the results reached''[4]. Millon observed that the rule on lifting the corporate veil is ''notoriously incoherent and results unpredictable''[5]. Gower and Davies described the rule as 'essentially haphazard and irrational'[6]. Oh argued that the rule is plagued by ''the use of pejorative expressions to mask the absence of rational analysis''[7]. And according to Dignam and Oh; ''For over a century UK courts have struggled to negotiate a coherent approach to the circumstances in which the Salomon principle – that a corporation is a separate legal entity – will be disregarded''[8]. In *Prest v Petrodel Resources Ltd*[9], Lord Neuberger observed that it is ''clear from cases and academic articles that the law relating to the doctrine is unsatisfactory and confused''.

It is not only in the UK courts that the law on lifting the corporate veil has attracted searing criticisms. In the USA, Blumberg has described judicial decisions on lifting the corporate veil as ''irreconcilable and not entirely comprehensible''[10], while Landers long argued that lifting the veil cases ''defy any attempt at rational explanation''[11]. Easterbrook and Fischel also noted that the lifting of corporate veil ''seems to happen freakishly. Like lightning, it is rare, severe and unprincipled''[12]. Similarly, in Australia Herron CJ noted a long time ago in *Commissioner of Land Tax v Theosophical Foundation Pty Ltd*[13] that:

> Authorities in which the veil of incorporation has been lifted have not been of such consistency that any principle can be adduced. The cases merely provide instances in which courts have on the facts refused to be bound by the form or fact of incorporation when justice requires the substance or reality to be investigated.

Over fifty decades after Herron CJ's observation, Ford and et' al noted that; ''In Australia, it is still

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[1] [1897] A.C. 22
[2] A. Schall, (2016). The New Law of Piercing the Corporate Veil in the UK, ECFR 4: 550 at 569.
[3] See Mohamed F. Khimji and Christopher C. Nicholls, (2015). Piercing the Corporate Veil in the Canadian Common Law Courts: An Empirical Study, 41:1 Queen's LJ, 207-254
[4] Ballantine, H.W., Ballantine on Corporations, 1946. Cited in Strasser, K., (2005). "Piercing the Veil in Corporate Groups", 37 Connecticut L.R. 637, p. 641.
[5] Millon, D., (2007). "Piercing the Corporate Veil, Financial Responsibility, and the Limits of Limited Liability" 56 Emory L.J. 5, 1305 – 1382, 1305
[6] LCB Gower and P Davies, Principles of Company Law (6th edn, Sweet & Maxwell 1997) 138
[7] PB Oh, (2010). 'Veil-Piercing' (2010) 89 Tex L Rev 81, 84
[8] Alan Dignam and Peter B Oh, (2019). Disregarding the Salomon Principle: An Empirical Analysis, 1885–2014 Oxford Journal of Legal Studies, Vol. 39, No. 1, pp. 16–49
[9] [2013] 3 W.L.R. 1 at para 64
[10] Phillip I. Blumberg, (1983). The Law of Corporate Groups: Procedural Problems in The Law of Parent and Subsidiary Corporations (Boston/Toronto: Little, Brown and Co.)
[11] Jonathan M. Landers, (1975). A Unified Approach to Parent, Subsidiary & Affiliate Questions in Bankruptcy, 42 U. CHI. L. REV. 589, 620.
[12] Frank H. Easterbrook and Daniel R. Fischel, (1985). Limited Liability & the Corporation, 52 U. CH. L. REV. 89, 89 (1985).
[13] (1966) 67 SR (NSW) 70-

impossible to discern any broad principle of company law indicating the circumstances in which a court should lift the corporate veil''[1]. Also, in Canada the Supreme Court had observed that the cases of lifting the corporate have ''no consistent principle in common''[2]. Therefore, the lack of consistent principles of lifting the corporate veil is manifest across leading common law jurisdictions. The circumstances in which the corporate veil can be lifted are severely circumscribed, and it is ''impossible to list the cases in which the veil will be lifted''[3]. Empirical studies that have identified cases of lifting the corporate veil focused mainly on the comparative rates of lifting between individual and corporate controlling shareholders, and in contract and tort cases.

In the 1991 pioneering empirical study on lifting the corporate veil in the USA, Thompson found no evidence of success of lifting the veil against public companies and, lifting in corporate cases not only appeared to be more often against individual than corporate shareholders, but also to occur more often in contract than in tort cases[4]. Less than a decade later in 1999, Mitchell carried out similar study in the UK and found a relatively high 47.24% (based on 290 sample cases) overall rate of refusal to lift the corporate veil, and that attempts to lift the veil on corporate shareholders arise and succed more frequently in claims lying in contract than tort[5]. Instructively, Mitchell found that the 1990 case of *Adams v Cape Industries Plc*[6] had not 'ushered in a new era of legal formalism in the English courts' as the rate of refusal to lift the veil went up rather came down after the case.

The empirical study on lifting the corporate veil in Australia conducted by Ramsay and Noakes in 2001 made some key findings which include[7]: a. 38.5% rate of success in lifting the corporate veil based on 104 sample cases; b. the number of shareholders in the company makes a difference to the rate of lifting the corporate veil with cases involving a company with only one shareholder having lifting rate of about 45%, while the rate declined as the number of the shareholders increased; and c. the courts lift the corporate veil less frequently when lifting is sought against a parent company than when against one or more individual shareholders.

Similarly, Khimji and Nicholls' 2015 empirical study on lifting the corporate veil in Canada found that the courts have been more willing to lift the corporate veil to find a corporation liable for shareholder or sibling corporation obligations, but less willing to do so where it would mean holding a shareholder liable for corporate obligations. And that the classification of lifting the veil claim is relevant to the outcome as lifting rates have been higher in liability cases than they have been in shareholder or enterprise benefit cases[8]. The authors conclude that the theoretical justifications of limited liability and separate legal personality appear to be compelling enough to prevent the high rate of lifting the corporate veil. In the latest UK study in 2019 by Dignam and Oh the findings confirm historical patterns of uncertainty and a low but overall fluctuating low rate of lifting the corporate veil in recent years[9].

These empirical studies have provided better understanding of the pattern and structure of lifting the corporate veil by the courts in the respective common law jurisdictions. The studies also offer deeper perspectives on the low success rate of lifting the corporate veil. However, the studies did not find the reason for the inconsistency in the reasonings of the courts in deciding whether or not to lift the corporate veil. Also, the studies did not find the reason for the failure of the court to formulate and develop clear rules or principles for lifting the corporate veil. One reason that may be inferred from the findings of Khimji and Nicholls[10], in the case study of Canada, is that there is judicial deference to the concept of corporate legal personality. This reflects the argument in some quarters that the concept may be sent 'up in flames'[11] by the practice of lifting the corporate veil.

[1] H A J Ford, R P Austin and I M Ramsay, (1999). Ford's Principles of Corporations Law, 9th ed, 1999, [4.400].
[2] See the case of *Kosmopoulos v Constitution Insurance Co of Canada* [1987] 1 SCR 2 at 10, 63 OR (2d)
[3] S Ottolenghi, (1990). 'From Peeping Behind the Veil to Ignoring it Completely' (1990) 53 The Modern Law Review' 338, 352
[4] RB Thompson, 'Piercing the Corporate Veil: An Empirical Study' (1991) 76 Cornell L Rev 1036
[5] C Mitchell, 'Lifting the Corporate Veil: An Empirical Study' (1999) 3 Company Financial & Insolvency Law Review 15
[6] [1990] Ch 433
[7] Ian M Ramsay and David B Noakes, (2001). Piercing the Corporate Veil in Australia, 19 Company and Securities Law Journal 250-271
[8] MF Khimji and CC Nicholls, 'Piercing the Corporate Veil in the Canadian Common Law Courts: An Empirical Study' (2015) 41 Queen's LJ 207
[9] Alan Dignam and Peter B Oh, (2019). Disregarding the Salomon Principle: An Empirical Analysis, 1885–2014 Oxford Journal of Legal Studies, Vol. 39, No. 1, pp. 16–49
[10] ibid
[11] In the case of *Wallersteiner v Moir* (1974) 1 W.L..R 991, 1013, defendant's counsel had argued that; 'It is quite wrong to pierce the corporate veil. The principle enunciated in *Salomon v Salomon & Co. Ltd* is sacrosanct. If we were to treat each of these concerns as being Dr. Wallersteiner himself under another hat, we should not be lifting a corner of the corporate veil. We should be sending it up in flames.' In this case, Lord Denning MR lifted the corporate veil and held that the offshore companies were the 'creatures' of the defendant.

Lifting the Corporate Veil in Prest v Petrodel Resources Ltd

From the case law, up to the 2008 decision in *Ben Hashem v Al Shayif* [1], the state of the law on lifting the corporate veil in the UK remained as disparate as the different judicial rulings. But it has to be noted that the case law, with the exception of *Woolfson v Strathclyde Regional Council*[2], was dominated by the Court of Appeal decisions. However, prior to the case of *Prest v Petrodel Resources Ltd* the factual circumstances that should justify lifting the corporate veil, including the applicable principles, were further confused by the decision of the commercial court in *Antonio Gramsci Shipping Corp v Stepanovs*[3] and the Supreme Court judgment in *VTB Capital Plc v Nutritek International Corp & Others*[4].

In *Antonio Gramsci Shipping Corp v Stepanovs*, the claimants had entered into charter party with defendants, who were five offshore companies. The defendants were used by their controlling shareholder to hire ships from the claimants at a lower rate and then chartered out the ships at higher rates for personal profits. The claimants sought to lift the corporate veils with a view to holding all defendants jointly and severally liable. Burton J held that;

> [t]here is a good arguable case that the veil of incorporation should be pierced in order to permit the Claimants to seek to enforce the charter parties as against the Defendant as a party to them.… in any event there is no authority, binding or otherwise, which prevents such a conclusion being reached, whereby a victim would be entitled to enforce a contract entered into by a puppet company against both puppet company and puppeteer.

Burton J then concluded thus;

> There is in my judgment no good reason of principle or jurisprudence why the victim cannot enforce the agreement against both the puppet company and the puppet who, all the time, was pulling the strings. The claimants seek to enforce the contract against both puppeteer and the puppet company.

This judgment of Burton J drew the ire of the Supreme Court two years later when it was confronted with the case of *VTB Capital Plc v Nutritek International Corp & Others,* and *Antonio Gramsci Shipping Corp* was cited before it. In *VTB Capital Plc,* the claimant, a foreign controlled bank, entered into a loan agreement to finance the acquisition of various dairy companies from defendant. When defendant was in default of the loan agreement the facts revealed that the acquisition was a sham because the borrower companies were under the common control of defendant who also made fraudulent misrepresentations in procuring the loan agreement.

The claimant sought to lift the corporate veil on grounds of the fraudulent misrepresentations so as to make defendant and the companies jointly and severally liable under the loan agreement. In a unanimous decision, the Supreme Court refused to lift the corporate veil. It overruled and harshly criticised the judgment of Burton J in *Antonio Gramsci Shipping Corp v Stepanovs*. In the lead opinion of the court, Lord Neuberger stated as follows;

> It seems to me that the conclusion in *Gramsci* was driven by an understandable desire to ensure that an individual who appears to have been the moving spirit behind a dishonourable (or worse) transaction, action, or receipt, should not be able to avoid liability by relying on the fact that the transaction, action, or receipt was effected through the medium (but not the agency) of a company. But that is not, in any view, enough to justify piercing the corporate veil for the purpose of holding the individual liable for the transaction, action, or receipt, especially where the action is entering into a contract.

Contrary to Burton J judgment and other preceding authorities, Lord Neuberger even expressed doubts whether the courts have the jurisdiction to lift the corporate veil at all. Assuming there is such jurisdiction in appropriate circumstances, Lord Neuberger held that the facts of the case did not give rise for that jurisdiction to be invoked. But most unsettling about this judgment of the apex court was that it questioned the very existence of the doctrine of lifting the corporate veil. Understandably, therefore, it failed to state any guiding principles or clarify any circumstances in which the courts can exercise jurisdiction to lift the corporate veil. However, within few months and before the confusion inherent in the case could start to play out in courtrooms and judicial decisions, the Supreme Court was, once again, confronted with another case on lifting the corporate veil in *Prest v Petrodel Resources Ltd*.

Therefore, the law on lifting the corporate veil was in a state of flux and disorder, and ideal for the Supreme to strengthen and resolve in *Prest v Petrodel Resources Ltd*. In the case, appellant had applied for the transfer of seven properties belonging to defendant, a group of companies, in order to satisfy a divorce settlement with her husband who owned and controlled the respondent. The relevant question was whether the corporate veil could be lifted for the purpose of transferring respondent's properties to appellant. The Supreme Court refused to lift

[1] 2008] EWHC 2380 (Fam)
[2] [1978] UKHL 5
[3] [2011] EWHC 333 (Comm)
[4] [2013] UKSC 3

the corporate veil[1].

Delivering the lead opinion of the Court, Lord Sumption conceded that the principle of lifting the corporate veil has been recognised far more often than it has been applied but that the case law is characterised by 'incautious dicta' and 'inadequate reasoning'. Lord Sumption held that the only justification for lifting the corporate veil is ''the abuse of the corporate legal personality of a company to use it to evade the law or to frustrate its enforcement'', and that such abuse would only be justified under the 'evasion' 'concealment' principles;

> The difficulty is to identify what is a relevant wrongdoing. References to a "facade" or "sham" beg too many questions to provide a satisfactory answer. It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases, the court is not disregarding the "facade", but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. Many cases will fall into both categories, but in some circumstances the difference between them may be critical. This may be illustrated by reference to those cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil[2].

In conclusion, Lord Sumption held that the corporate veil is to be lifted, where appropriate and necessary, only where no other, more conventional legal remedy is available to redress the wrongdoing or corporate abuse. In effect, lifting the corporate veil is a residual remedy of last resort;

> The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil[3].

Evasion and Concealment Principles of Lifting the Corporate Veil

Prest v Petrodel Resources Ltd represents the current law on lifting the corporate veil, and for the first time, lays down what can be referred to as guiding principles; the evasion and the concealment principles. Also, it has clarified: that a doctrine of lifting the corporate veil exists at common law; that lifting the corporate veil is justified under the evasion principle; that lifting the corporate veil is a remedy of last resort, to the effect that where ''there is no other method of achieving justice, the doctrine provides a valuable means of doing so''[4].

The clarification that the doctrine can be applied by courts to achieve justice is instructive because it counters preceding authorities such as *Adams v Cape Industries Plc* where Slade LJ stated that the court is not at liberty to disregard the concept of corporate legal personality as affirmed in *Salomon v Salomon* ''merely because it considers that justice so requires''. The case has also been praised by Schall for abolishing the façade/sham test of the former 'fraud exception' because such approach to lifting the corporate veil was based on the archaic notion of the company as a mere fiction that concealed the truth and could be ignored whenever necessary[5].

However, the case gives rise to matters that are less than clear. For instance, it is difficult to understand that only *evasion* cases can amount to abuse of corporate legal personality in order to justify lifting the corporate veil. This difficulty is evident in the application of the evasion principle by Lord Sumption to the preceding cases of *Gilford Motor Co Ltd v Horne, Jones v Lipman, Gencor ACP Ltd v Dalby* and *Trustor AB v Smallbone (No 2*), and arrived at the puzzling conclusion that it was only in the former two that the corporate veil was correctly ''pierced'', while the latter two were mere cases under the concealment principle where the veil should have been ''lifted'' .

In substantial respects, the four cases involved abuse of corporate legal personality because the companies were used for fraudulent purposes by their owners and controlling shareholders. Identifying the thin line amongst these four cases, or future similar cases, for the purpose of applying the evasion principle would amount to an attempt at drawing a distinction without a difference. Although Lady Hale concurred with the lead judgment by

[1] The court however granted the application on the ground that respondent held the properties on trust for the appellant's husband.
[2] Per Lord Sumption, at para 28
[3] Per Lord Sumption, at para 35
[4] Per Lord Sumption, at para 69
[5] A. Schall, (2016). The New Law of Piercing the Corporate Veil in the UK, ECFR 4: 550 at 564

Lord Sumption, her ruling on the difficulty of distinguishing the cases along the evasion and concealment principles is telling;

> I am not sure whether it is possible to classify all of the cases in which the courts have been or should be prepared to disregard the separate legal personality of a company neatly into cases of either concealment or evasion. They may simply be examples of the principle that the individuals who operate limited companies should not be allowed to take unconscionable advantage of the people with whom they do business[1].

Similarly, Lord Mance stated that he was not prepared to hold that only the evasion principle justifies true piercing of the corporate veil: ''It is however often dangerous to seek to foreclose all possible future situations which may arise and I would not wish to do so''[2]. We contend that in practice the evasion principle, due to its inherent vagueness, may be reduced to a wider principle of corporate abuse, as Lady Hale appears to suggest, which would in turn embolden the courts to lift the corporate veil more often, thereby unduly undermining the concept of corporate legal personality. Afterall, Lord Sumption did not define the scope of the evasion principle, and the majority judgment held that *evasion* is not exhaustive. We suggest that the evasion principle may include the wider notion of abuse of corporate legal personality[3]. In effect, the evasion principle may either ease the lifting of corporate veil or restrict it. We doubt if it may be able to strike the optimum balance between respect for the concept of corporate legal personality and the doctrine of lifting the corporate veil.

Another matter that arises from *Prest v Petrodel Resources Ltd* is that Lord Sumption differentiated between ''piercing'' and ''lifting'' the corporate veil. According to his judgment, ''piercing'' is limited to *evasion* cases, where the separate legal personality of the interposed company will defeat or frustrate a right or liability or enforcement of a right or liability which exists independently of the company. And ''lifting'' applies to *concealment* cases in order for the court to look behind the corporate veil, to identify the real actors where the identity is legally relevant[4]. Lord Sumption criticised the preceding authorities where the corporate veil was purportedly ''pierced'', when it was, in his view, only ''lifted''.

But there is hardly a perceptible difference between ''lifting'' the corporate veil or looking behind the company to see who the ''real actors'' are where their identity is legally relevant, and the consequence of ''piercing'' the veil to identify whether there is an evasion of rights or frustration of enforcement by the ''real actors''[5]. As we argue in the introductory part of this article, both terms are mere metaphors for reference to the exceptional circumstance in which the corporate legal personality is ignored or disregarded.

We submit that the consequence of ''piercing'' or ''lifting'' the corporate veil is almost always the same; the shareholder or the controlling director is held liable for the debts or obligations of the company, or the parent company, in the case of subsidiary companies. The relevant issue ought to be (and has mostly been) the appropriate circumstances in which the corporate personality of a company needs to be undermined, and not the semantic description of the act. However, the fact that a mere semantic or phraseological matter has received the judicial imprimatur of the highest court may have far-reaching legal implications.

This judicial distinction between ''piercing'' or ''lifting'' may introduce undue legal technicalities into the doctrine of lifting the corporate veil. It is capable of complicating the identification and analysis of the appropriate circumstances for the application of the evasion principle. An appeal can proceed on it where a lower court casually or mistakenly used one term instead of the other. For instance, at the Court of Appeal stage in *Prest v Petrodel Resources Ltd*, Rimer L.J used both terms interchangeably in his ruling[6]. Instructively, in material respect ''piercing'' or ''lifting'' the corporate veil results to the same outcome. In the interest of substantial justice, the Supreme Court is best placed to overrule legal technicalities, not to introduce one as in this case.

CONCLUSION

Matters that arise from the Supreme Court decision in *Prest v Petrodel Resources Ltd* include the fact that there is no clear line between the evasion and concealment principles. For practical purposes both principles lack inherent distinguishing features to make it easy to identify the type of factual circumstances that fall within one or the other. Lord Sumption did not elaborate on the nature or define the borders of the principles. And while drawing a distinction between ''piercing'' and ''lifting'' the corporate veil, he offered no clarity on the effect of the distinction, particularly the circumstances in which ''lifting'' the corporate veil in concealment cases would

[1] at para 92
[2] at para 100
[3] Schall argues to the contrary that such ''general notion of corporate abuse would be worse than going back to square one because it would introduce the very general concept that exists (and has been tamed!) in other jurisdictions but was never accepted in the UK''. See A. Schall, (2016). The New Law of Piercing the Corporate Veil in the UK, ECFR 4: 550 at 570-571
[4] See Lord Sumption's judgment at paras 28 and 35
[5] Hannigan, B., "Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-man Company" [2013] 50 Irish Jurist, 11 – 39, at 19.
[6] *Prest v Petrodel Resources Ltd* [2013] 1 All E.R. 795, see paras 122, 132, 140-143 and 154

be appropriate, and the likely consequences.

Thus, the principles would defy fair and consistent application as they are susceptible to either be construed widely or restrictively, depending on judicial whim or discretion. The difficulty or unpredictability in the application of the principles may lead to judicial recourse to other remedial devices such as the law of agency and the law of trusts, even in ideal cases for the application of the doctrine of lifting the corporate veil. Already, the case has consigned the doctrine to a mere residual remedy with limited jurisdiction to apply it.

Therefore, in spite of whatever contributions it has made to retain the doctrine and save it from total abolition, *Prest v Petrodel Resources Ltd* may have set in motion the gradual demise of the doctrine of lifting the corporate veil. Hannigan argues that the doctrine ''can be expected to wither into obscurity''[1]. And according to Schall; ''It seems that it is time to say goodbye, for the doctrine of piercing the veil is on its way to its own Brexit''[2].

With this uncertain future of the doctrine, we hope the Supreme Court would have another opportunity, sooner than later, to clarify and resolve these matters arising from *Prest v Petrodel Resources Ltd*. Unfortunately, where there is absence of principle, further development of the law will be difficult for the courts because development of common law is incremental and often by analogical reasoning[3]. Bainbridge has pointed out that uncertainty and lack of unpredictability in the doctrine of lifting the corporate veil increase transaction costs for small business[4].

It is, therefore, in the interest of small businesses, particularly in developing common law jurisdictions like Nigeria, that there is in existence clear and well-defined principles for fair and just application of the doctrine of lifting the corporate veil. For this purpose, there may be need for statutory intervention, especially in the business contexts of individual and corporate shareholders. Statutory provisions already exist where corporate legal personality is abused or used for fraudulent and criminal purposes by controlling directors[5]. There is hardly similar statutory provision that replicates the doctrine of lifting the corporate veil in most common law jurisdictions.

For example, under the Nigerian Companies Act 2020, there is no express provision for lifting the corporate veil. The closest provisions are those that empower the appointment of inspectors to investigate ownership of a company; for the purpose of determining the true persons who are or have been financially interested in the success or failure of the company, or able to control or materially to influence the management of the company[6].

Other provisions on when a court may lift the corporate veil and hold ''delinquent directors'' and controlling shareholders personally liable, relate to fraudulent and wrongful trading of a company that is being wound up[7]. Similar provisions can be found in the UK Companies Act 2006[8]. While awaiting future Supreme Court clarification, clear statutory provisions can be enacted which can strike the optimum balance between corporate legal personality and the doctrine of lifting the corporate veil.

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[1] Hannigan, B., "Wedded to Salomon: Evasion, Concealment and Confusion on Piercing the Veil of the One-man Company" [2013] 50 Irish Jurist, 11 – 39, at 28

[2] A. Schall, (2016). The New Law of Piercing the Corporate Veil in the UK, ECFR 4: 550 at 574

[3] *Antonio Gramsci Shipping Corporation v Lembergs* [2013] EWCA Civ 730

[4] Bainbridge, S., "Abolishing Veil Piercing" [2000], http://papers.ssrn.com/paper.taf?abstract_id=236967. p. 1

[5] For a comprehensive list of such provisions in Nigerian statutes, See Kathleen O, (2019) An Anatomy of the Grounds of Lifting the Corporate Veil: Steps to Codification. Int J Fam Business Management 3(2): 1-11

[6] Section 369(1)

[7] See sections 672 – 675; For an incisive comparative and statute-based analysis of the doctrine of lifting the corporate veil, See Babajide S. Shoroye, (2021). Defining the Relationship between the Rules in Foss v Harbottle and Salomon v Salomon: A Nigerian View, International Journal of Law, Policy and Social Review 3:4, 39-47

[8] See section 993