

Chapter 4

Corporate Personality

Here, basic guidance to the end-of-chapter questions will be provided.

1. Define the following terms:

- corporate veil;
- piercing the veil;
- individual;
- legal person;
- evasion principle.

Term	Definition
corporate veil	The veil which shields those behind the company (e.g. directors and members) from being liable for the company's debts and liabilities
piercing the veil	The disregarding of a company's separate personality
individual	A natural person (i.e. a human being)
legal person	A person created by operation of the law (e.g. a company or LLP)
evasion principle	The principle which provides that a company's corporate personality can be set aside where a person is 'under an existing obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control (<i>Prest v Petrodel Resources</i>)

2. State whether each of the following statements is true or false and, if false, explain why:

- a company's separate personality was established in the case of *Salomon v A Salomon & Co Ltd*;
- a company cannot be owned;
- a company can set up another company;
- the *ratio* of *Petrodel Resources Ltd v Prest* is that the courts can only disregard corporate personality where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control;
- the courts can only disregard a company's corporate personality where other conventional remedies have proved to be of no assistance;
- a parent company does not owe a duty of care to persons harmed by the actions of its subsidiary.

- **A company's separate personality was established in the case of *Salomon v A Salomon & Co Ltd*:** This statement is false. The concept of corporate personality existed long before Salomon.

- **A company cannot be owned:** This statement is true. As a company is a person, it cannot be owned.
- **A company can set up another company:** This statement is true.
- **The *ratio* of *Petrodel Resources Ltd v Prest* is that the courts can only disregard corporate personality where a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control:** This statement is false. This statement, whilst one of the most important parts of the case, is *obiter* only and so not part of the *ratio*.
- **The courts can only disregard a company's corporate personality where other conventional remedies have proved to be of no assistance:** This statement is true (unless a statutory exception applies that allows for a company's corporate personality to be disregarded).
- **A parent company does not owe a duty of care to persons harmed by the actions of its subsidiary:** This statement is false. Whilst a parent company will not usually owe a duty of care to persons harmed by the actions of its subsidiary, there are limited instances where such a duty can be owed.

3. **'Whilst *Petrodel Resources Ltd v Prest* has helped clarify the law relating to piercing the corporate veil, the approach advocated by Lord Sumption is far too restrictive.' Discuss the case of *Prest* and analyse the approach put forward by the Supreme Court.**

Introduction

- Every essay should begin with a succinct introduction that demonstrates that you understand the essay question. Briefly explain what the essay is about and set out what the essay will discuss and how it will be structured.
- This question requires you to discuss the Supreme Court's approach to disregarding a company's corporate personality in *Petrodel Resources Ltd v Prest*.

Disregarding corporate personality pre-*Prest*

- Before looking at *Prest*, it might be useful to briefly discuss why the Supreme Court in *Prest* decided to provide *dicta* on disregarding corporate personality. Prior to *Prest*, the circumstances in which the courts would disregard corporate personality were rather unclear and established in a series of cases, some of which had been strongly criticised (e.g. *DHN Food Distributors Ltd v Tower Hamlets LBC*). Accordingly, clarification from the Supreme Court was arguably needed.

Petrodel Resources Ltd v Prest

- Begin by noting the criticism of certain Justices of pre-*Prest* case law, notably Lord Neuberger was of the opinion that there was not a single prior example of where the court's doctrine of disregarding corporate personality has been invoked properly and

successfully. However, it should be noted that not all the Justices could agree on which cases were and were not true examples of disregarding corporate personality.

- Note that the Court was of the opinion that the courts should have an inherent power to disregard corporate personality, but the issue as when this power should be exercised.
- Discuss and compare the concealment and evasion principles and note that, accordingly to Lord Sumption, the evasion principle is the only instance where the courts can disregard a company's corporate personality. Further, even if the concealment principle does apply, the court will only disregard a company's corporate personality where other, more conventional, remedies have proved to be of no assistance.
- There is no doubt that Lord Sumption's dicta do clarify to a degree when the courts can disregard a company's corporate personality. There is also no doubt that it does this by notably restricting when corporate personality can be disregarded to one circumstance, and even then if no other more conventional remedies exist.
- Note that Lord Sumption's comments on disregarding corporate personality are *obiter* only, but they have been followed in a number of subsequent cases.

Conclusion

- Every essay should end with a conclusion. Briefly summarise the main points/arguments and, if possible, come to a conclusion regarding the essay topic (i.e. which of the opposing views has the stronger arguments).

4. Dragon Tools Ltd ('DT'), a subsidiary of Dragon plc, wishes to build a new factory. In order to fund this, DT borrows £200,000 from Dragon plc, and this money is used to purchase a piece of land upon which the factory will be built. DT purchases the land, but then discovers that it does not have planning permission. Fortunately, HouseBuild Ltd, a local property developer, has offered DT £220,000 for the land and so DT and HouseBuild enter into a contract for the sale of the land. A few days later, however, Sajid (a director of Dragon plc and a member of the local council) indicates to the directors of DT that if it applied for planning permission, it would certainly be granted. Accordingly, before the sale of the land is completed, DT transfers the land to Dragon plc, and argues that the contract with HouseBuild is no longer valid as DT does not own the land. DT obtains the planning permission and begins plans to construct the factory.

The factory is to be used to build a new piece of machinery that is currently in a prototype stage. The research and development of this machine is being conducted by Dragon Research Ltd ('DR'), another subsidiary of Dragon plc. All of the directors of DR are either directors of Dragon plc or are nominated by Dragon plc. The R&D work is being funded by DR selling shares, all of which have been purchased by Dragon plc, but this funding is insufficient. The directors of Dragon plc tell the directors of DR to find ways to reduce costs, and this is done by stopping research on what materials are best used to house the machine's internal components. However, as a result of this, the machine's housing suffers from a structural weakness and, when tested for the first time, the machine explodes injuring several

of DR's employees. A short time later, these employees commence proceedings against DR, but DR has since been voluntarily wound up by Dragon.

The directors of Dragon plc and DT seek your advice regarding any possible liability that Dragon and DT might face.

DT and Housebuild

- The first issue to discuss is the contract between DT and HouseBuild. DT has entered into a contract with Housebuild under which it will sell a piece of land for £220,000. The issue that arises is that DT appears to change its mind and wishes to keep the land as it has gained planning permission to build on the land. DT therefore transfers the land to Dragon plc in order to avoid its obligation to sell the land to Housebuild.
- The issue is whether the court will disregard DT's corporate personality and require Dragon plc to transfer the land to HouseBuild. This will depend upon whether the facts of the case fall within the evasion principle set out in *Prest*. This requires discussing several questions.
- First, is there an existing legal obligation that is placed upon DT. The answer to this is yes, as there is a contract between DT and HouseBuild which places a legal obligation on DT to sell the land.
- Second, has DT interposed a company to evade or frustrate the obligation in question. It could be argued, in transferring the land to Dragon, Dragon has been interposed in order to prevent DT from being able to sell the land to HouseBuild. However, one might argue the extent to which DT itself was able to do this, as Dragon is the parent.
- Third, is the company that was interposed under DT's control. One might assume the answer to this is no, as Dragon is the parent company and DT the subsidiary. However, they may have a common set of directors, so this may be more complex.

The injuries sustained by DR's employees

- The second issue is who is liable for the injuries suffered by DR's employees. DR would be the likely defendant, but it has been wound up, so suing DR is no longer possible. The issue is therefore whether DR's employees can commence proceedings against Dragon.
- It will almost certainly be the case that the evasion principle will not apply here and so the courts will not disregard Dragon's corporate personality. Even if the evasion principle did apply, it would likely not be used as there is likely another more conventional remedy here, which is to try and argue that Dragon owed the employees a duty of care.
- The key case to look at here is *Chandler v Cape Industries plc*. Discuss the factors paid down in Chandler that could give rise to Dragon owing the employees a duty of care (e.g. did Dragon know, or should it have known, of the unsafe work conditions). It is likely that the facts do not provide enough information for you to come to a definitive conclusion on this. However, given the courts' reluctance to hold that a duty does exist (as evidenced in subsequent cases), the employees of DR would have a difficult time establishing a duty.