UDC 347.72 + 347.73 **DOI: 10.34670/AR.2025.47.40.012**

Separate Legal Personality in UK Company Law: Genesis, Doctrinal Foundations and Exceptions

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Abstract

This article is dedicated to the analysis of the principle of separate legal personality in United Kingdom company law, with an emphasis on its historical foundations, legal justification, and limits of application. The first part examines the emergence and evolution of this doctrine, including its judicial recognition and subsequent codification in statutory law, particularly in the provisions of the Companies Act 2006. Next, attention is given to the justification of the principle, while elucidating the legal and practical consequences of recognizing a company as an independent legal entity. Special attention is paid to the development of judicial exceptions and the circumstances under which courts are prepared to depart from the principle of corporate separateness, resorting to the doctrine of "piercing" (or "lifting") the corporate veil. The relevance of this research is due to the fact that the principle of separate legal personality remains a cornerstone of corporate law, determining the distribution of liability and the system of corporate governance in the context of globalization and the increasing complexity of corporate structures. A critical analysis of its theoretical foundations and exceptions allows not only for a deeper understanding of corporate legal doctrine but also for identifying the ongoing tension between protecting shareholder interests and preventing abuses of the corporate form.

For citation

Belov V.A. (2025) Separate Legal Personality in UK Company Law: Genesis, Doctrinal Foundations and Exceptions. *Voprosy rossiiskogo i mezhdunarodnogo prava* [Matters of Russian and International Law], 15 (11A), pp. 108-119. DOI: 10.34670/AR.2025.47.40.012

Keywords

Corporate law, separate legal personality, corporate veil, piercing the corporate veil, UK law, statutory exceptions, judicial practice, corporate governance, legal theory, legal regulation.

Introdution

The concept of a group or organisation having legal personality separate from its members is rooted in legal history when the English law drew implemented the idea of the persona ficta (an "artificial person"). The artificial or fictitious theory of corporate personality is believed to have its roots in Roman law as reflected in the work of Pope Innocent IV (1243–1254). [Uzoechi, 2013] Religious institutions were frequently recipients of property, necessitating a legal framework to recognize these bodies as property owners. Canon law addressed this by treating ecclesiastical bodies as “fictitious persons” (personae fictae). [Dewey, 1926; Farrar & Hannigan, 1998] This concept was later adopted into common law, where it quickly gained acceptance due to its usefulness in addressing legal challenges posed by various collective entities, including public authorities, boroughs, hospitals, and religious foundations. Sutton's [Farrar & Hannigan, 1998] Even in case law there was stated the unique nature of the legal entities which are incorporated for the special purposes – hospitals, donation, etc. In Sutton’s Hospital Case [Sutton's Hospital Case, 1612] it was held that the incorporation was valid, as was the subsequent foundation of the charity and so the transfer of property to it, including the nomination of a master of the charity to receive the donation, was not void.

Main part

Early corporations were created by royal charter or private Act of Parliament [Watkins & Nsubuga, 2020] – for example, municipalities, colleges, and companies [Nyombi & Bakibinga, 2014] – and once incorporated, such entities could hold property and litigate as independent persons, apart from their members or shareholders. Meanwhile, the Bubble Act 1720 [Bubble Act 1720, 1720] had restricted the formation of companies without a royal charter or Act, forcing entrepreneurs to rely on partnership-like associations that did not confer a distinct legal identity; therefore, members faced the risk of personal liability for the obligations of the business, thereby increasing the legal and financial exposure associated with participation in such ventures. [Turner, 2017]

Over time, the inconvenience and risk of large unincorporated enterprises – and the growing capital demands of the Industrial Revolution – led to calls for legal reform. By the early 19th century, the climate had shifted in favour of easing incorporation. The Bubble Act was repealed in 1825, and courts and commentators increasingly recognized the advantages of the corporate form. Businessmen began to use deeds of settlement and trusts to imitate some features of incorporation (such as transferable shares and centralised management).

The formal legal basis for general incorporation (and thus separate corporate personality in the UK) was established through a series of mid-19th-century statutes. Joint Stock Companies Act 1844 [Joint Stock Companies Act 1844, 1844] introduced incorporation by registration, allowing businesses to form a corporate entity without a royal charter or special Act and it conferred legal personality on the registered company, though initially it did not provide limited liability to shareholders (members remained liable for the company's debts as if partners) [Watkins & Nsubuga, 2020]. Only Limited Liability Act 1855 [Limited Liability Act 1855, 1855] addressed the separate issue of shareholder liability, which allows the limitation of shareholders’ liability to the amount unpaid on their shares. This made the registered company a very attractive vehicle for business.

Then, Companies Act 1862 [Companies Act 1862, 1862] firmly established the framework of company law, including the principle that an incorporated company is a “body corporate” distinct from its members. The law stated that “the subscribers of the memorandum of association, together with

such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal" [Companies Act 1862, 1862]. In other words, the Act endowed the company with its own legal and the capacity to act in law as if it were a person – including owning property and entering into contracts – and it expressly gave the company perpetual succession. Those significant features of separability of the legal entity were also upheld by the courts. Notably in Farrar v Farrars Ltd [Farrar v Farrar's Ltd, 1888] a person sold property to a company in which he was a principal shareholder. The sale was challenged as effectively a sale to himself. The court held the sale was valid: a company is a separate entity and can thus contract with its own participants; a sale of assets by a major shareholder to his company is a sale between two distinct legal persons, i.e. by default – transactions between a member and the company are real, not nullified by unity of interest (though issues of fairness or fraud could be addressed separately, the separate entity itself was not denied). In another case Metropolitan Saloon Omnibus Co Ltd v Hawkins [Metropolitan Saloon Omnibus Co Ltd v Hawkins, 1859] the court held that a company could sue in its own name for defamation. An incorporated company was held to have a corporate reputation and could protect it in court. [Omole, 2019]

These legislative milestones and court cases laid the legal foundation for the doctrine of separate corporate personality. By the late 19th century, English company law had the essential statutory framework treating a registered company as a distinct legal entity. What remained was for the judiciary to interpret and apply these statutes, confirming the extent of the company's separateness from its participants. This came to a head in a series of cases, culminating in the landmark decision of Salomon v A. Salomon & Co Ltd [Salomon v A. Salomon & Co Ltd, 1897].

Salomon v A. Salomon & Co Ltd as a Turning Point. The definitive judicial affirmation of a company's separate legal personality came in Salomon v A. Salomon & Co Ltd as the cornerstone of English company law, confirmed the principle that a company has a distinct legal personality with certain rights and duties. [Uzoechi, 2013, c. 33] In this famous case, the House of Lords unanimously vindicated the principle that once a company is duly incorporated, it is a legal person separate from its founders and shareholders – even if, in economic reality, it is a "one-man" company.

The facts of Salomon illustrated the issue sharply: Mr. Aron Salomon was a leather boot manufacturer who incorporated his longstanding sole proprietorship as a limited company. There were seven shareholders, including his wife and children as nominal shareholders (each taking one share), while Mr. Salomon himself took the majority of shares and became managing director. When the business later failed, the company's liquidator and unpaid creditors argued that the company was essentially a sham or "alias" of Mr. Salomon and that he should be personally liable for its debts – in effect asking the court to ignore the company's separate personality.

However, the House of Lords, overturning the decisions of the lower courts, held that since Salomon & Co Ltd had been validly incorporated, it possessed a separate legal personality distinct from Mr Salomon. As a result, he was not personally liable for the company's debts. The company was not considered his agent, and his liability was limited solely to the extent provided by the regulation. One of the key arguments made in this case was Lord Halsbury L.C.'s affirmation that "…once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are." … "the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are

absolutely irrelevant in discussing what those rights and liabilities are." [Salomon v A. Salomon & Co Ltd, 1897, c. 30]

This was also affirmed by Lord Macnaghten when he stated that, "When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate 'capable forthwith' … of exercising all the functions of an incorporated company. … The company is at law a different person altogether from the subscribers to the memorandum. … Nor are the subscribers liable, in any shape or form, except to the extent and in the manner provided by the Act." [Salomon v A. Salomon & Co Ltd, 1897, c. 51]

Finally, the House of Lords held that Mr. Salomon, as a shareholder (and debenture-holder), could not be held personally liable for the company's obligations beyond his investment and any guarantees he had given. The decision thus upheld firmly the doctrine of corporate personality, as set out in the Companies Act 1862, protecting shareholders (even sole controllers) from direct liability for the company's debts. That is why Salomon v A. Salomon & Co Ltd is widely regarded as the cornerstone of modern company law and is considered the most significant case in corporate law, as well as the "leading authority on the rule of separate legal personality" [Lim, 2014, c. 534].

Following Salomon case, English courts consistently upheld the principle of separate legal personality, further demonstrating its practical consequences. Throughout the 20th century, a series of cases reinforced the doctrine that, once incorporated, a company is a legal person, distinct from its owners and managers. This contributed to the development and consolidation of the legal consequences of adhering to the separate legal personality principle. Main legal consequences of the implementation of separate legal personality principle may be divided into the following. [Das, www]

Asset ownership. The company can own its own property, as such it should be insured in the company's own name, i.e. any assets owned by the company legally belong to the company itself—not to the individuals who run or invest in it. It is important to distinguish between ownership: the company, its shareholders, and its directors may all own assets, but these assets are legally distinct from one another. In Macaura v Northern Assurance [Macaura v Northern Assurance Co Ltd, 1925], Mr Macaura owned the Killymoon estate in County Tyrone, Northern Ireland. He sold the timber there to Irish Canadian Sawmills Ltd for 42,000 fully paid up £1 shares, making him the whole owner (with nominees). Mr Macaura was also an unsecured creditor for £19,000. He got insurance policies - but in his own name, not the company's - with Northern Assurance covering for fire. Two weeks later, there was a fire. The insurance companies declined to accept liability, and the Court of Appeal held that Macaura had no insurable interest in the timber. That approach supports the principal of separate legal personality and promotes the idea that shareholders, regardless of their level of control or financial interest in the company, do not own the company's property. Consequently, they cannot claim insurance or other rights over such property in their personal capacity.

Contractual capacity

Like natural persons, companies have the capacity to enter into contracts. However, this analogy is complicated by the fact that contract formation requires consensus ad idem—a meeting of minds—while a company, as an artificial legal entity, possesses neither mind nor will of its own. Instead, contractual capacity is exercised through the actions of human agents, typically directors or authorised officers, who act on the company's behalf. This arrangement gives rise to the agency dilemma [Jensen & Meckling, 1976], referring to the potential divergence between the interests of the company (as the principal) and those of its agents (the individuals who control and manage it). Agents may act in self-interest, rather than in the best interests of the company or its stakeholders, which can lead to abuses of power or misappropriation of corporate assets.

Despite this inherent risk, companies are recognised as legal persons for contractual purposes, meaning that upon incorporation, a company acquires full legal capacity [Uzoechi, 2013, c. 38] to enter into binding contractual obligations. In Lee (Catherine) v Lee's Air Farming [Lee v Lee's Air Farming Ltd, 1961] Catherine Lee's husband Geoffrey Lee formed the company through Christchurch accountants, which worked in Canterbury, New Zealand. It spread fertilisers on farmland from the air, known as top dressing. Mr Lee held 2999 of 3000 shares, was the sole director and employed as the chief pilot. He was killed in a plane crash. Mrs Lee wished to claim damages of 2,430 pounds under the Workers' Compensation Act 1922 for the death of her husband, and he needed to be a 'worker', or 'any person who has entered into or works under a contract of service... with an employer... whether remunerated by wages, salary or otherwise.' The company was insured (as required) for worker compensation. The Privy Council advised that Mrs Lee was entitled to compensation, since it was perfectly possible for Mr Lee to have a contract with the company he owned. The company was a separate legal person. There appears to be no substantial difficulty in accepting that an individual acting in the capacity of a company director or controlling shareholder may enter into a contract with himself in a separate personal capacity, such as that of a creditor, employee, or supplier, provided the company is recognised as a separate legal entity. Therefore, in the case above was confirmed that the company and the deceased were separate persons: legal entity and nature person.

Perpetual succession

The company has perpetual succession, meaning the company does not cease to exist just because a member ceases to be a member. As an abstract legal person, the company cannot die, although its existence can be brought to an end through the winding up procedure. [Davies & Worthington, 2012, c. 4] It cannot become incapacitated by illness, mental or physical, and it has not (or need not have) an allotted span of life. [Daimler v Continental Tyre and Rubber Co, 1916] Perpetual succession as a consequence of separate legal personality refers to the principle that a company, as a separate legal entity, continues to exist irrespective of changes in its membership, ownership, or management. This concept is a cornerstone of corporate law, ensuring that the company endures despite the death, retirement, or departure of its shareholders or directors. In Re Noel Tedman Holdings Pty Ltd [Re Noel Tedman Holdings Pty Ltd, 1967] a husband and wife were the only shareholders and directors of the company. Both died in an accident and were survived by their infant child. Despite their death, the company was still in existence as per the law. According to the Articles, the directors had to approve the transfer of their shares. Since there were no directors, the court decided to appoint new directors. However, members were required to vote for their appointment and the company had no members. The court then decided to allow personal representatives of the deceased to appoint new directors that could assert on the transfer of the shares. This case clarifies that even in case of death of all the members of the company, the company will still exist. The perpetual existence of the company contributes to the company's stability as well as long life.

Limited liability

The legal existence of a company (corporation) means that it can be responsible for its own debts. [Hawk, 2000, c. 108] In a limited liability company, the liability of individual members is limited to the amount of money which each has agreed to contribute to the common capital fund. As soon as the person has paid for the amount of shares he has agreed to subscribe to, his liability is ended. [Bainbridge, 2001, c. 480] This is one of the advantages of a company that has limited liability. Creditors of the company cannot be taking any action against the members, because the members are separate from the company. By contrast, in a partnership, members are liable to an unlimited extent to the last penny of their private fortune in order to meet the debts and obligations of the business.

[Partnership Act 1890, 1890] In the case Re Yee Yut Ee [Re Yee Yut Ee, 1978] Yee the company had retrenched their staff, and dispute arose as to the retrenchment benefits. The matter was brought to the Industrial Arbitration Court where an award was made in the company's absence. As the company did not comply with the award, the Arbitration Court ordered that Yee be personally liable as he had been appointed director by then. The High court held that a director is nor liable for the company's debts.

To be able to sue / to be sued on its own name

In general, the legal actions involving the company do not extend to its shareholders or directors personally, reinforcing the distinction between the company as an entity and the individuals behind it. One of the essential attributes of separate legal personality is that the company has the capacity to act and initiate legal proceedings or defend itself in court under its own name, i.e. if the company is involved in legal proceedings, it must be initiated in the name of the company, and not in the name of the shareholders or directors as it is the company, which exists as its own legal person, itself being sued or suing. Meanwhile, in certain circumstances, shareholders may use the mechanism of a derivative action under Part 11 of the Companies Act 2006, allowing them to bring a claim on behalf of the company, typically against directors for breach of duty, where the company itself fails or refuses to act.

In summary, each of named legal consequences and specified above decisions reaffirmed what Salomon v A Salomon & Co Ltd had crystallized: that the "separate entity" rule pervades company law as keystone of modern company law [Lipton, 2019]. Separate legal personality encourages entrepreneurs and investors to participate in business ventures without fear of unlimited personal loss. By incorporating a business, investors are assured that their financial risk is limited to the amount of capital they contribute to the form of shares, while their personal assets remain protected from any liabilities incurred by the company. That assist investors to contribute money into companies knowing they would not be liable beyond that investment, which in turn mobilizes pools of capital for businesses that might otherwise never get funded. [Armour, Hansmann & Kraakman, 2017, 9-10]

The rationale for the doctrine of separate legal personality lies in risk allocation, economic efficiency, and clarity in legal relationships. By partitioning the business venture into a separate persona, the law allocates risk to the business's own assets (and its creditors) and away from the personal assets of investors, which in turn spurs investment and entrepreneurial activity. It provides a stable, continuous entity to transact business, thereby enhancing legal certainty and commercial convenience for all parties dealing with the company.

The Reverse Side (Drawbacks) of Separate Legal Personality

The principle of separate legal personality, as established in Salomon, has a foundational status and undisputed significance for the corporate law. Rather than serving its legitimate function of facilitating lawful business through the separation of corporate and personal liability, the doctrine is at times misappropriated as a tool for evasion [Jones v Lipman, 1962], concealment [Trustor AB v Smallbone (No 2), 2001], or avoidance of legal obligations [Gilford Motor Co Ltd v Horne, 1933]. Such manipulative use of corporate personality undermines the legitimate purpose of incorporation, which is to facilitate the lawful separation of business risk from personal liability, not to provide a vehicle for wrongdoing or evasion of justice. It also compromises the legitimate expectations of third parties who engage with corporate entities in good faith, often without knowledge of the internal arrangements that enable such evasive practices. That is why the separate legal personality doctrine is not without critics and negative aspects. [Micheler, 2024]

There are several significant downsides which are lead in nature of formulating of exceptions in the doctrine of separate legal personality. Those downsides have a close connection with the behaviour

of the directors while they are doing business on behalf of the legal entity. The first one relates to the excessive risk-taking approach [Goodhart, www] of doing the businesses. Excessive risk-taking can justify an exception to the principle of separate legal personality because directors may be motivated to let the company engage in high-risk ventures without sufficient assets to absorb potential losses. They stand to gain from any success but avoid personal liability for failure, as the risk is shifted onto others. [Stone, 1980, c. 65-76] The excessive risk-taking approach has a strong connection with egoistic behaviour of directors, because they act as temporary hired persons who would like to earn as much as they can during their period of their management powers. [Worthington, 2016, c. 307-310] Directors who prioritise personal benefit or short-term gain may be incentivised to take disproportionate risks on behalf of the company. Their egoism may manifest through aggressive investment strategies, speculative acquisitions, or risky financial structuring, not because these choices are in the best interest of the company or its stakeholders, but because they serve the director's personal objectives—such as enhancing performance bonuses, increasing share value in the short term, or attracting favourable public or market attention. This problem is amplified in cases where directors are insulated from the consequences of failure but stand to gain significantly if the risks succeed. A notable illustration is the case of Polly Peck International Plc v Nadir [Polly Peck International plc v Nadir (No 2), 1992], where the CEO acted for his own benefit and as a result faced conviction for embezzling corporate funds. [Polly Peck International: Whose Nadir?, www] Therefore, central to the criticism of those actions argued as a result of harm to stakeholders, including creditors, employees, consumers, and the wider public, while allowing corporate controllers to engage in conduct contrary to the original purpose of the doctrine itself. One more example is R v Boyle Transport (Northern Ireland) Ltd [R v Boyle Transport (Northern Ireland) Ltd, 2016], where corporate structure was used to conceal unsafe working conditions and breach health and safety laws, thereby endangering employees.

Second downside of the doctrine of separate legal personality relates to the limitation of the liability of the directors, i.e. using the doctrine of separate legal personality as in instrument for evasion of personal liability. This misuse is particularly problematic when those in control of the company engage in fraudulent trading, siphon assets, or recklessly incur debts knowing the company cannot meet its obligations. For example, the fraudulent trading activities were determined in Morphitis v Bernasconi, where directors tried to incorporate a new company and resign and transfer the assets trying to avoid a liability in relations with landlord. [Morphitis v Bernasconi, 2003] One well-known scandal relevant to this issue is the Barings Bank scandal, in which a rogue trader, Nick Leeson, engaged in derivatives trading on East Asian exchanges—some of which were unauthorized. As a result of the massive losses incurred, Barings Bank became insolvent and was placed into administration. Nick Leeson was subsequently held criminally liable for his actions.

A third behavioural ground for piercing the corporate veil is establishment of the company for a facade or sham purposes, i.e. solely to evade or hide existing company's legal obligations. This misuse typically arises when an individual inserts a company between themselves and a legal obligation to escape liability, diverts assets through the company, or uses the entity merely as a shell without independent business substance. In such circumstances, courts may recognize that the company is a mere vehicle for wrongdoing or fraud. [Bainbridge & Henderson, 2016, c. 137] Such approach is illustrated in Gilford Motor Co Ltd v Horne [Gilford Motor Co Ltd v Horne, 1933] and Jones v Lipman [Jones v Lipman, 1962], where the courts held that the companies were created as devices to avoid contractual or equitable obligations. Scholars have reinforced this view, noting that the creation of a corporate structure with no legitimate business purpose other than to conceal personal liability or frustrate legal enforcement amounts to an abuse of the doctrine. [Pargendler, 2024] As such, the

separate legal personality will not be respected where it is used as a cloak for illegality, bad faith, or deliberate harm to creditors and third parties. [Micheler, 2024]

Finally, collectively, all specified elements have contributed to the development of a coherent doctrinal and practical framework for the approach of piercing the corporate veil, which serves as an exception to the doctrine of separate legal personality.

Conclusion

The principle of separate legal personality remains one of the most fundamental doctrines in UK company law, which has never been doubted. As explored in this work, its establishment—particularly through the landmark case of Salomon v A. Salomon & Co Ltd —marked a turning point in corporate jurisprudence, affirming that a duly incorporated company possesses a distinct legal identity, separate from its members.

The rationale for this principle lies in its practical and economic benefits: it promotes investment, limits personal financial exposure, and facilitates the aggregation of capital by enabling investors to participate in business ventures without assuming unlimited risk. The company becomes a self-contained legal actor, capable of owning property, suing and being sued, and entering into contracts independently of its shareholders.

However, this doctrinal clarity is not without complication. These realities provide compelling justification for the development and application of limited exceptions to the doctrine of separate legal personality. Such exceptions, which enable courts to "pierce" or "lift" the corporate veil , are necessary to prevent the illegal statutory actions and/or abuse of corporate structures in circumstances where adherence to the doctrine would lead to manifest injustice. They serve to restore a fair balance between the protection of limited liability and the need to safeguard the rights of third parties adversely affected by the misuse of the corporate form. While separate legal personality remains the default rule, the exceptions provide limited legal bases for courts to disregard the corporate veil in circumstances where maintaining the fiction of corporate independence would facilitate fraud, evade legal obligations, or otherwise result in manifest injustice.

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Принцип отдельной юридической личности в корпоративном праве Великобритании: генезис, доктринальные основания и исключения

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Аннотация

Данная статья посвящена анализу принципа отдельной юридической личности в праве компаний Соединённого Королевства, с акцентом на его исторические основания, правовое обоснование и пределы применения. В первой части рассматриваются возникновение и эволюция данной доктрины, включая её судебное признание и последующее закрепление в статутном праве, в частности в положениях Закона о компаниях 2006 года (Companies Act 2006). Далее внимание уделяется обоснованию принципа, при этом освещаются правовые и практические последствия признания компании самостоятельным юридическим лицом. Особое внимание уделяется развитию судебных исключений и обстоятельствам, при которых суды готовы отступить от принципа корпоративной обособленности, прибегая к доктрине «пронзания» (или «снятия») корпоративной вуали. Актуальность данного исследования обусловлена тем, что принцип отдельной юридической личности остаётся краеугольным камнем корпоративного права, определяя распределение ответственности и систему корпоративного управления в условиях глобализации и усложнения корпоративных структур. Критический анализ его теоретических оснований и исключений позволяет не только углубить понимание корпоративно-правовой доктрины, но и выявить продолжающееся напряжение между защитой интересов акционеров и предотвращением злоупотреблений корпоративной формой.

Для цитирования в научных исследованиях

Белов В.А. Separate Legal Personality in UK Company Law: Genesis, Doctrinal Foundations and Exceptions // Вопросы российского и международного права. 2025. Том 15. № 11А. С. 108-119. DOI: 10.34670/AR.2025.47.40.012

Ключевые слова

Корпоративное право, отдельная юридическая личность, корпоративная вуаль, пронзание корпоративной вуали, право Великобритании, статутные исключения, судебная практика, корпоративное управление, теория права, правовое регулирование.

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