

SALOMON IN LOCAL SETTING

BY

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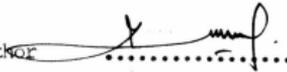
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ABSTRACT

This paper is presented in the following manner:

1. Introduction to the Principle of corporate personality.
2. Application of the Principle and it's exceptions.
3. Malaysian extension of the Principle.
4. Conclusion.

The introduction primarily deals with the decision by the House of Lords in *Salomon v Salomon and Co.* It is of the writer's view that this is important so as to see and understand the Principle of corporate personality. Although the principle was stated in the 1862 Companies Act (U.K), it was not until the Salomon's case that the English Courts had full grasp of the existence of a corporate entity conferred by the Act.

Chapter II of the paper deals with the application of the Principle of separate legal personality not only in English courts but also in other Commonwealth's courts. This chapter also deals with the exceptions to the general principle of separate legal personality made by the courts. Statutory provisions which admits lifting of the corporate veil is not discussed.

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INTRODUCTION

1. When the House of Lords decided the case of Salomon v Salomon & Co.¹ their lordships also outlined the circumstances in which the doctrine of separate legal entity will not apply. Lord Halsbury L.C. for example cited two such circumstances, namely fraud and agency.² Lord Macnaughten observed that if there was no fraudulent act then there was "nothing in the evidence to support such imputation."³ Therefore eventhough their lordships stressed upon the literal interpretation of the principle they never intended the principle to be applied in toto without any qualification.

2. It has been said, however, that "the importance of the rule in Salomon's case has often been exaggerated."⁴ It has been thought that the case laid down the proposition that in any circumstances a shareholder who controlled a wholly-owned company must be regarded as an entirely different legal person from that of his company. In modern years however, the interpretation of the rule in Salomon's case has been considerably qualified. Modern law looks at the reality of the situation rather than the "formal position."

3. There are many ways in which courts in modern years justify the lifting of the veil of incorporation to look at the reality of the situation. Apart from statutory provisions⁵ which admits lifting of the veil, courts are prepared to lift the veil of incorporation when agency or trust can be implied. Further a new concept has been developed, i.e. the economic unit theory.⁶ Sometimes the conduct of the promoter may also warrant the lifting of the veil especially when the conduct of the promoter is improper in the eyes of the court.

4. The concept that a company is a separate legal person from the incorporators has been accepted in Malaysia. The Malaysian Companies Act 1965 (revised 1973) Section 16(5) entrenched the acceptance of the concept of separate legal personality. However there has been some judicial statements that has treated the principle somewhat differently. This is a departure from the traditional practice of the local courts to accept the "ready made answer"⁷ from the English courts.

5. The object of this paper is to establish principles, if any, that could be used by the courts to determine when and in what circumstances the corporate veil could be disregarded. It is also proposed to examine to what extent the Malaysian courts had departed from the general principles which have been established by the English courts. The statutory provisions which in effect disregard the corporate principles are not discussed here.⁸