

LAWS2014 CASE NOTES

SEMESTER 2, 2024

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TOPIC 3: LEGAL PERSONALITY

1. SEPARATE LEGAL ENTITY AND LIMITED LIABILITY

- (a) Salomon v Salomon and Co [1897] AC 22 (read Lord Halsbury's reasons)

Facts	<ul style="list-style-type: none">• Mr Salomon had a leather making business that was successful.• He sold the business to a LTD company which he owned• He got shares and a debenture through this process.• Salomon was main shareholder, creditor director (essentially a single person controlling)• Salomon claimed he had priority over unsecured creditors.• The liquidator argued that the company was a 'sham' and sought to have Mr Salomon personally liable and to have his debenture cancelled.
Issue	<ul style="list-style-type: none">• Is a person who owns, controls and operates a company (effectively making it a one person company) liable for the debts of the company?
Held	<ul style="list-style-type: none">• The court held that provided it was not a 'sham' the company has an existence separate from that of its members and officers.• The court upheld the idea of separate legal personality.• Therefore, Salomon was entitled to be paid as a secured creditor, as it was not a sham and was not intended to defraud creditors.

- (b) Lee v Lee's Air Farming Ltd [1961] AC 12

Facts	<ul style="list-style-type: none">• Air Crop Dusting company, where director was the sole employee, director and shareholder.• He died and his wife sought compensation through the insurance company.• The insurer denied the claim, on the basis that the husband was a not a worker but was a director of the company.
Issue	<ul style="list-style-type: none">• Was the director and shareholder also a employee of the company?
Held	<ul style="list-style-type: none">• The court held that the husband was a employee of the company, as he was a separate legal person from the company.<ul style="list-style-type: none">◦ Therefore a company can contract with its own persons – you can function in dual capacities (i.e., director and employee).

- (c) Macaura v Northern Assurance Co [1925] AC 619

Facts	<ul style="list-style-type: none">• Macaura, owner of a timber business, sold it to a company he controlled.• The business was insured against fire under his name before the sale.• After the sale, the timber was destroyed by fire.• The insurer denied the claim, stating the company, as the new owner, was uninsured.
Issue	<ul style="list-style-type: none">• Does a person who controls, owns and operates a company retain any legal or equitable interest in an asset if it is transferred?
Held	<ul style="list-style-type: none">• The court held that the new company is a separate legal entity – therefore the policy did not cover the new company.

2. PIERCING THE CORPORATE VEIL

(a) Prest v Petrodel Resources Ltd [2013] 2 AC 415 (read Lord Sumption's reasons)

Facts	<ul style="list-style-type: none">• There were divorce proceedings, and a question arose as to if properties hidden by Mr Prest could be transferred to Mrs Prest.
Issue	<ul style="list-style-type: none">• Could the corporate veil be pierced to allow access to the properties?
Held	<ul style="list-style-type: none">• The court held that the assets were held on resulting trust for Mr Prest by companies and that Mrs Prest was entitled to 50%.• The corporate veil could not be pierced as Mr Prest was not seeking to evade any existing legal liability
When will the corporate veil be pierced? – evasion principle	
<ul style="list-style-type: none">• It should only be pierced to prevent abuse of corporate legal personality.<ul style="list-style-type: none">○ For example to<ul style="list-style-type: none">▪ deliberately evade the law, or▪ frustrate its enforcement.○ It is not an abuse to cause a legal liability to be incurred by the company in the first place○ It is not an abuse to rely on the fact (if it is a fact) that a liability is not the controllers because it is the company's.○ The principle should be limited.• Here there was no public policy imperative which justified piercing the corporate veil	

(b) Commissioner for Fair Trading v TLC Consulting Services Pty Ltd [2011] QSC 233

Facts	<ul style="list-style-type: none">• Person banned from operating a dating introduction agency in Qld• Person then set up a company to do that which she was prohibited from doing - acting as the 'alter ego' of the company• Case concerned whether the person's conduct constituted contempt of court order, held that it did• Case also argued on the basis of breaching court order through agency relationships (but no need to decide this)
Issue	<ul style="list-style-type: none">• Could they pierce the corporate veil?
Held	<ul style="list-style-type: none">• The court found that piercing the corporate veil was not required here, as the persons conduct allowed the court to impose an order.