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A COMPARATIVE ANALYSIS ON THE APPLICATION OF THE DOCTRINE OF SEPARATE LEGAL PERSONALITY TO PARENT/HOLDING COMPANIES AND ITS SUBSIDIARIES - THE UNITED KINGDOM, UNITED STATES AND NIGERIAN APPROACH

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1.0. INTRODUCTION

The major effect of incorporation is that a company assumes a "separate legal personality" from that of its members.[1] Thus, an incorporated company, like any natural person, has rights and liabilities enforceable by and against it, with no liabilities on members beyond what the law provides for, or what its Memorandum and Articles of Association allows. Hence, members, depending on the corporate form taken, assume either limited or unlimited liability rather than an unrestricted personal liability. In simple terms, a corporate veil is used to shield members from liability arising from the company's activities.

The rule is traceable to the case of *Salomon* v *Salomon*,[2] and has been codified in various companies' legislation. The application of this rule is, however, checked by courts and the legislature. Thus, in certain instances, the corporate veil is pierced to hold members liable where such members have used the company as a stratagem for achieving unscrupulous objectives. The big issue in modern corporate law is that holding or parent companies set up subsidiaries, which they control to shield themselves from liability. This is catastrophic for the innocent stakeholders dealing with such companies and their subsidiaries.

Hence, this paper seeks to examine the suitability of the judicial decisions and statutory provisions on piercing the veil to expose the intention of parent companies who utilize subsidiaries to perpetuate fraud or impropriety or to escape liability. This analysis will be by comparatively examining the legal position in the United States of America (USA), the United Kingdom (UK) and Nigeria, under the new

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[1] R. Kabour "Revisiting the Inhibited Doctrine of Piercing the Corporate Veil in English Company Law" (2019) 9(2) *The King's Student Law Review*, pp. 59 – 73.
[2] [1897] AC 22.

Companies and Allied Matters Act 2020.[3] The company laws in these jurisdictions have all codified the rule in *Salomon* v *Salomon*.[4]

2.0. UNITED KINGDOM'S POSITION ON THE DOCTRINE OF SEPARATE LEGAL PERSONALITY

The principle of separate corporate personality in its modern form is traceable to English law. However, this rule existed before *Salomon's case*. The idea of separate legal personality is traceable to the era of the evolution of joint stock companies which already existed as separate entities from members who have put funds together to facilitate the objects of such a company. Hence, even writers such as Brice[5] and Kyd[6] acknowledged the separate personality principle in defining a "company". The judicial recognition for this principle came in the 1836 case of *R* v *Arnaud*.[7] Further recognition was given under the Companies Act 1862, which states in section 6 that a registered company is separate from its members. A writer argues that before *Salomon*, the principle that a corporation is a separate legal entity was fully developed.[8] However, the modern corporate law, especially with respect to limited liability, separate legal personality, and the importance of debentures in company capitalization are traceable to *Salomon* v *Salomon*, making the case one worthy of discussion.

In *Salomon's case*, Aron Salomon sold his businesses to a newly formed entity for 21,000 shares valued at £1 per share; £6,000 in cash and £10,000 in debentures. He was one of the shareholders and his wife and 5 children were also shareholders of a share each. He used his debenture as security for a loan of £5,000 from Broderip, who was reissued debenture worth £10,000. After Broderip sued to enforce

[3] Company and Allied Matters Act 2020.
[4] *Ibid*.
[5] S. Brice, *A Treatise on the Doctrine of Ultra Vires: Being an Investigation of the Principles Which Limit the Capacities, Powers, and Liabilities of Corporations, and More Especially of Joint Stock Companies* (Stevens and Haynes: 1874).
[6] S. Kyd, *A Treatise on the Law of Corporations* vol. 1 (London, 1793), p. 13.
[7] *R* v *Arnaud* [1846] 9 QB 806.
[8] P. Lipton, "The Mythology of Salomon's Case and the Law Dealing with the Tort Liabilities of Corporate Groups: An Historical Perspective" (2014) 40(2) *Monash University Law Review*, p. 455.

the obligations under the debenture and claimed what was due to him, leaving £1,055 to Mr. Salomon, a liquidator was appointed. The Liquidator then sought to enforce the loan due to the company's creditors worth £7,733 against Mr. Salomon, arguing that the company was not separate from him and that he was to indemnify the company. In the High Court, Vaughan Williams J. found for the liquidators, holding that the company was not separate, but was an alias of Mr. Salomon and his agent. Thus, Mr. Salomon was legally obliged to indemnify his agents by personally paying for the loan. The Court of Appeal upheld this judgment, calling the company a sham, myth, fiction, device, and stratagem, amongst others, created in abuse of corporate form and legislative intent and controlled by Mr. Salomon, with dummy shareholders. The court also opined that a trust relationship existed between Mr. Salomon and the company. The House of Lords was however keen on upholding the separate personality of the company, by overturning the previous decisions. Although Mr. Salomon can be said to have controlling interests, Lord Macnaghten opined that nothing stopped him from doing so under the law. Lord Herschell further noted that the statute only requires seven shareholders and provides nothing as to volume of control. Also, no trust or agency relationship existed in the opinion of the law Lords. The rule created by the House of Lords was to uphold the sanctity of the rule of corporate personality, which had the effect of creating a "corporate veil" between members of the company and outsiders. The effect is that the company can exercise various rights, including the right to sue and be sued in its corporate name, the right to enter contracts, the right to hold property,[9] and perpetual succession.[10] Notably, the rule has received both judicial and legislative affirmation.[11]

Despite its emphasis on the sanctity of the corporate form, *Salomon* v *Salomon* also exposed the fact that the sacred corporal veil can indeed be pierced, but the House of Lords found no reason to do so in that case. However, courts in subsequent cases and even the legislature

[9] *Tate Access Floors Inc.* v *Boswell* [1991] Ch 512; *Macaura* v *Northern Assurance Co Ltd* [1925] AC 619.
[10] M. Welters, "Towards a Singular Concept of Legal Personality" (2013) 92 La Revue Du Barreau Canadien, pp. 418 and 425.
[11] UK Companies Act 2006, section 16(3); *Short* v *Treasury Commissioners* [1948] 1 KB 116 122, per Evershed LJ.

have found the need to pierce the corporate veil in certain instances, which are seen as exceptions to the rule of separate legal personality. Hence there are legislative and judicial grounds for piercing the veil. The legislative exceptions include:

1. The imposition of liability on all persons who knowingly traded fraudulently to defraud creditors in the process of winding up;[12]
2. Failure to obtain a trading certificate;[13]
3. Criminal liability for failure to use company's name on relevant documents;[14]
4. Moving the assets of an insolvent company to a new one which has wholly or partly same directors and in some cases the same name;[15] and
5. Wrongful trading.[16]

On the other hand, the judicial grounds include:

1. Where an agency exists between the company and said member(s);[17]
2. Where fraud is perpetrated, and the company exists as a mere façade;[18] abuse of corporate form;[19]
3. Where the motive or opinion of a person is material in determining enemy character;[20]
4. In tort and criminal cases, for the purpose of imposing liability on those who are the directing mind and will of the company;[21]

[12] UK Companies Act 2006, section 993; UK Insolvency Act 1986, section 213; *Re Maidstone Building Provisions Ltd.* [1971] 1 WLR 1085; *Re Augustus Barnett & Son Ltd.* [1986] BCLC 170.
[13] Companies Act 2006, section 761.
[14] *Ibid*, at section 84.
[15] UK Insolvency Act 1986, section 216
[16] *Ibid*, at section 214; *Re Continental Assurance Co of London plc* [2007] 2 BCLC 287.
[17] *Re FG (Films) Limited* [1953] 1 WLR 483; *Southern* v *Watson* [1940] 3 All ER 439.
[18] *Gilford Motor Co.* v *Horne* [1933] Ch 935; *Jones* v *Lipman* [1962] 1 WLR 832.
[19] *Re Bugle Press Ltd* [1961] Ch 270.
[20] *De Beers Consolidated Mines* v *Howe* [1907] UKHL 626; *Daimler Co. Ltd.* v *Continental Tyre & Rubber Co Ltd.* [1916] 2 AC 307.
[21] *Lennard's Carrying Co. Ltd.* v *Asiatic Petroleum Co. Ltd.* [1915] AC 705; *R* v *Kite and OLL Ltd.* [1996] 2 Cr AppR. (S).

5. To avoid injustice;[22] and
6. Where maintaining the veil will lead to evasion of tax or revenue obligations.[23]

Another ground for lifting the veil is to expose the economic realities of an enterprise. Thus, English Courts are willing to lift the veil between the parent/holding companies and outsiders[24] where the latter has been used as an instrumentality of the former. In *DHN Food Distributors Ltd* v *Tower Hamlets LBC*,[25] Lord Denning MR opined that the justification for treating a holding company and its subsidiaries as a single entity is because they are treated as one under law especially as regards general accounts, profit and loss accounts, and balance sheet. However, the Court of Appeal in *Adams* v *Cape Industries Plc*[26] refused to treat Cape and its American subsidiary, NAAC, as one entity as the law contemplates such separate existence.

As earlier noted, the English position on piercing the veil is more restrictive than that of its American counterpart. However, this restrictive approach was made even narrower in the recent cases of *Prest* v *Petrodel Resources Limited and Others*[27] and *VTB Capital plc* v *Nutritek International Corp and Others*.[28] In both cases, the English Supreme Court per Lords Sumption and Neuberger, respectively, limited the circumstances under which the veil would be pierced to where a person with an existing legal obligation, liability or subject to a legal restriction evades or frustrates such liabilities by interposing a company which such a person controls. Thus, the extension of the principle was cautioned, noting that rather than extend the principle in all cases, the courts can employ other areas of law such as tort, agency, and trust to achieve the intended aim and hold member(s) liable.[29] The Supreme Court in *Prest* approved the decision in *Adams* v

[22] *Creasey* v *Breachwood Motors* [1993] BCLC 480.
[23] *Re FG (Films) Limited*, *supra* n 17.
[24] L.C.B. Gower, *The Principles of Modern Company Law 3rd ed.* (Stevens: 1969), p. 216.
[25] *DHN Food Distributors Ltd.* v *Tower Hamlets LBC* [1976] 1 WLR 852.
[26] *Adams* v *Cape Industries Plc* [1990] Ch 433.
[27] *Prest* v *Petrodel Resources Limited and Others* [2013] UKSC 34.
[28] *VTB Capital plc* v *Nutritek International Corp. and Others* [2013] UKSC 5.
[29] W. McArdle and G. Jones, "Prest v Petrodel Resources and VTB Capital v Nutritek: a Robust Corporate Veil" (2013) 14(3) *Business Law International*, p. 295.

Cape Industries Plc,[30] thereby establishing that as the current position on the application of the doctrine of "piercing the veil" to holding companies.

3.0. UNITED STATES' (CALIFORNIA) POSITION ON THE DOCTRINE OF SEPARATE LEGAL PERSONALITY

The principles of separate legal personality and the exceptions warranting piercing the corporate veil are not novel or strange to American jurisprudence,[31] and have been the subject of litigation for years, especially before the Californian courts.[32] As explained by Murray A. Pickering, this separate legal personality has three implications.[33] First, the company has the necessary legal capacity to carry out its objects, subject to restrictions by its Memorandum and Articles of Association.[34] Secondly, the company has the same contractual and proprietary rights enjoyed by natural persons and finally the company is accorded full procedural capacity.[35]

The principle of separate legal personality is codified in section 17701.04(a) of the Californian Revised Uniform Limited Liability Company Act,[36] which provides that a limited liability company is an entity which is distinct from its members. In interpreting a similar provision, the Central District Court of California in *NFT Parcel A LLC* v *Marix*[37] held against the argument that Palm Desert, a debtor company, was only an instrumentality of the defendant and as such, the latter should be liable for the loans of the company as a guarantor.

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[30] *Supra* n 26.
[31] P. Blumberg, "The Corporate Personality in American Law: A Summary Review" (1990) *38 American Journal of Comparative Law*, p. 49.
[32] *Minton* v *Cavaney* (1961) 56 Cal 2d 576.
[33] M.A. Pickering, "The Company as a Separate Legal Entity" (1968) 31(5) *The Modern Law Review*, pp. 481 and 502.
[34] *Trustees of Dartmouth College* v *Woodward* (1819) 17 US (4 Wheat), pp. 518 and 636.
[35] *Supra* n 31.
[36] California Revised Uniform Limited Liability Company Act (2012) [17701.01 - 17713.13] Codified in the California Corporations Code (Title 2.6 added by Stats 2012, Chapter 419, section 20).
[37] *NFT Parcel A LLC* v *Marix*No EDCV 09-287-VAP (VBKX) 2009 WL 5215373 (CD Cal 2009).

The Court was of the opinion that as a limited liability company, Palm Desert was primarily liable for its debts unless the grounds on which liability will be attributed to its members is proved. Despite the sanctity of the rule, California courts were ready to disregard the corporate veil which shielded the members of a company. Professor Gower noted that despite the rule originating from England, US courts showed a greater tendency to lift the veil enunciated in *Salomon* v *Salomon*.[38] This assertion was not far-fetched. The willingness of the Californian courts to pierce the corporate veil, relying on the "alter ego" or "instrumentality doctrines", was seen in the 1921 case of *Minifie* v *Rowley*[39] where the California Supreme Court opined that corporate laws will not be misused by the formation of sham entities or the commission of fraud and other misdeeds. Hence, the court will input liability on the members of a company shown to be used for fraud, impropriety or to escape liability, by regarding the company as a collection of said individuals.[40]

As a result, Californian courts developed a two-pronged test for applying the alter ego doctrine in piercing the corporate veil,[41] which are: the existence of unity of interest and ownership between the entity and owners, to deny the former separate personalities;[42] and that an inequitable result or injustice[43] must be shown to arise if liability for the act complained of is solely borne by the company.[44] With respect to the first leg, the court in *Arnold* v *Browne*[45] provided a long list of instances where unity of interest will be presumed, including:

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[38] L.C.B. Gower, "Corporation Law in England and America" (1955) 4(3) *UCLSR*, p. 4.
[39] *Minifie* v *Rowley* (1921) 87 Cal 481, 673.
[40] *Re International CabCompany* No 98-30535-WDM Chapter 7 (Bankr ND Cal 1999).
[41] *Automotrizetc De California* v *Resnick* (1957) 47 Cal 2d 792, 796 [306 P2d 1 63 ALR 2d 1042].
[42] J.R. Cambridge, "Piercing the Veil of a Michigan Limited Liability Company" (2003) *The Michigan Business Law Journal*, pp. 18 and 20.
[43] *Mesler* v *Bragg Management Co.* (1985) 39 Cal 3d 290 Cal Rptr 443; *NEC Electronics, Inc.* v *Hurt* (1989, 6th Dist) 208 Cal App 3d 772, 256 Cal Rptr 441.
[44] *Robbins* v *Blecher* (1997) 52 Cal App 4th 886; *Supra* n 41; *Sonora Diamond Corp* v *Superior Court* (2000) 83 Cal App 4th 523, 539.
[45] *Arnold* v *Browne* (1972) 27 Cal App 3d 386, 103 Cal Rptr 775.

1. Under-capitalization;
2. Where funds and asserts are diverted;
3. Utilization of corporate structure as a mere form;
4. Blending of funds and assets;
5. Where members treat corporate assets as theirs or diversion of assets to the detriment of creditors;[46]
6. The existence of an identical equity ownership in two entities;
7. Identical officers and directors in both the controlling and controlled entities,
8. Non-maintenance of minutes;
9. Non-existence of corporate assets;
10. Same office location, same employees; abuse of, or non-compliance with corporate formalities,[47]
11. Formation of the corporation as a mere shell;
12. Existence as an instrumentality for the activities of a separate corporation; unjustifiably concealing information on management, ownership, personal business activities, and financial interests;
13. Non-maintenance of arm's length relationships with related entities;
14. Formation of company to procure labour or merchandise for another entity;
15. Formation to carry out illegal transactions; concentration of assets in a company and liabilities in another; and
16. Formation of a company to avoid liability or impose liability on it.

The Californian position is more liberal compared to that of the UK, as will be shown subsequently. This is traceable to the liberal attitude of the American courts to corporate law principles emanating from English law. Notably, the instances captured by the decision in *Arnold*[48] mirror the happenings in an important area of modern corporate law and practice requiring the veil to be pierced, that is, the relationship between parent/holding companies and subsidiaries. Most companies incorporate subsidiaries for reasons ranging from carrying out certain

[46] *Stinky Love Inc* v. *Lacy* No B163377 (Cal App 2004); WL 1803273 (Cal App 2004).
[47] *Peinado* v *Barnett* (2001) WL 1380441 (Cal App 1 Dist 2001).
[48] *Supra* n 45.

transactions to shielding itself from liabilities and even to perpetuate fraud. Regrettably, these subsidiaries are not vested with the volume of assets to satisfy obligations owed to innocent third parties. Are the courts willing to pierce the corporate veil and hold the parent companies liable in such instances?

For instance, Powell[49] argues that the veil of a subsidiary can be pierced to impose liability on its parent company if the subsidiary is a mere instrumentality, that is under the control and domination of the parent company, or if the aim of such control is to utilize the subsidiary in perpetuating wrongful, unjust act or fraud against the plaintiff and that unjust loss must be suffered by the plaintiff from the defendant's conduct.[50] Notably, Powell's postulation revolves around the same factors employed by the courts to pierce the corporate veil and the most defining word used by the courts is "control".[51] The key relationships as stated in *McLaughlin* v *L Bloom Sons Co.* include control, instrumentality, agency, conduit or one corporation being an adjunct of another.[52] In *Mesler* v *Bragg Management Co.*,[53] the Supreme Court of California addressed the issue relying on the traditional two-pronged test for accepting the alter ego argument, stating that all that is required is to substitute the word "individual" for "corporation" where there is an abuse of the separate legal personality.[54] Explaining the policy behind the "alter ego" principle, the court noted that the control, agency and instrumentality between both corporations must be examined before liability is imposed to reach an equitable result which is just. Hence, the reason for imposition of liability on the parent company for acts of its subsidiary should not be based on the fact that they are one, but that a hole will be drilled through the wall of limited liability erected by a corporate form, where the wall is used for all purposes asides that which it was erected for. This principle was

[49] F.J. Powell, *Parent and Subsidiary Corporations: Liability of a Parent Corporation for the Obligations of its Subsidiary* (Callaghan: Chicago, 1931), pp. 4 – 6.
[50] *Lowendahl* v *Baltimore & OR Co.* 287 NYS 62, 76 (NY App. Div. 1 1936).
[51] W.J. Rands, "Domination of A Subsidiary by A Parent" (1999) 32 *Indiana Law Review*, pp. 421 and 434.
[52] *McLaughlin* v *L Bloom Sons Co.* (1962) 206 Cal. App. 2d 848.
[53] *Mesler* v *Bragg Management Co, supra* n 43.
[54] The Court cited: Comment, "Corporations: Disregarding Corporate Entity: One Man Company" (1925) 13(3) *California Law Review*, pp. 235 and 237.

recently restated in *Tran* v *Farmers Group Inc.*[55] As earlier stated, the factors formerly considered apply here, especially the existence of identical or same officers, directors, ownership, employees, offices, under-capitalization, and combination of funds.[56] The Californian position is quite extensive.

4.0. NIGERIA'S POSITION ON THE DOCTRINE OF SEPARATE LEGAL PERSONALITY

The Nigerian position on corporate personality is codified in section 42 of the Companies and Allied Matters Act 2020, which also states the rights accompanying this status.[57] The implication is that companies under the Nigerian law have rights and liabilities which are separate from that of its members.[58] In *Marina Nominees Ltd.* v *FBIR*,[59] the court, relying on *Salomon*, upheld the corporate personality of the appellant company, which was incorporated to carry out secretarial duties for a company named Peat Marwick Casselton Elliott & Co., despite using the same staff as the latter and even being run by partners from the latter company.

However, the principle has similar exceptions to those under English law which warrants the piercing of the corporate veil. Like the UK position, the exceptions are legislative and judicial. The legislative exceptions include: the liability of directors for debts arising in the period which a company failed to carry on business with at least two members;[60] operating below the authorized number of directors;[61] carrying out business recklessly during winding-up procedure with intent to defraud creditors;[62] wrongful trading;[63] personal liability for

[55] *Tran* v *Farmers Group Inc.* (2002) 140 Cal. App. 4th 1202.
[56] *Shaoxing County Huayue Import & Export* v *Bhaumik* (2011) 191 Cal. App. 4th 1189; *Brooklyn Navy Yard Cogeneration Partners LP* v *Superior Court* (1997) 60 Cal. App. 4th 248.
[57] Companies and Allied Matters Act 2020, section 42.
[58] J.E.O. Abugu, *Principles of Corporate Law in Nigeria* (MIJ Professional Publishers Limited: 2014), p. 181.
[59] *Marina Nominees Ltd.* v *FBIR* [1986] 2 NWLR (Pt. 20) 40.
[60] Companies and Allied Matters Act 2020, section 118.
[61] *Ibid*, at section 271.
[62] *Ibid*, at section 672.
[63] *Ibid*, at section 673.

failure to use the company's name in signing relevant documents;[64] liability of officers for the fraudulent application of money collected for special purposes or a project, where a fraudulent intention is shown in the collection of the money;[65] and the imposition of a duty on the directors of a holding company to prepare group financial statements to cover the individual financial statements of subsidiaries.[66] The last exception is a solid justification for the recognition of parent companies and subsidiaries as one entity.

On the other hand, the courts will be willing to pierce the corporate veil in the following instances: where there is fraud and impropriety in the formation of the said company;[67] where there is an abuse of the corporate form;[68] where the application of the doctrine of separate legal personality will lead to the evasion of taxes or other revenue obligations;[69] where an agency is in existence between two companies;[70] to ascertain the residency of a company for the purpose of taxation;[71] in the interest of justice;[72] and where the companies are one unit in reality, an exception applicable to the relationship between parent companies and their subsidiaries.[73]

Whilst noting the resemblance between the Nigerian and English positions, it will be expected that restraint will be applied by the Nigerian courts before piercing the corporate veil. However, the readiness of Nigerian courts to pierce the veil is alarming. The observation of this writer is that the Nigerian courts will be willing to pierce the veil at any instance where it seems an injustice will be done, rather than going behind this veil to hold the officers who have acted improperly liable, maintaining the sanctity of the principle of separate

[64] *Ibid*, at section 729(3)(a).
[65] *Ibid*, at section 316.
[66] *Ibid,* at section 379.
[67] *Adeyemi* v *Lan and Baker Nigeria Ltd.* (2000) 7 NWLR (Pt 663) 33; *PFS Ltd.* v *Jefia* (1998) 3 NWLR (Pt 543) 602.
[68] *Supra* n 58.
[69] *Marina Nominees Ltd.* v *FBIR, supra* n 59.
[70] *Supra* n 58.
[71] *Pan African Co. Ltd.* v *National Insurance Co. (Nig.) Ltd.* (1982) All NLR (Reprint) 229.
[72] *International Offshore Construction Ltd.* v *Shoreline Lifeboats Nigeria Ltd.* (2003) 16 NWLR (Pt. 845) 157 CA.
[73] *Supra* n 58.

legal personality. For instance, in *Mezu* v *Co-operative and Commercial Bank (Nig.) Limited*,[74] the contradictory statement by Dr. Mezu as to his ownership of the land to be sold by the respondent did not warrant the piercing of the appellant company's corporate veil as the Court should have invoked the doctrine of estoppel instead. But the court cited *Jones* v *Lipman*, assuming that the facts were similar, thus mandating the piercing of the corporate veil. This does not reflect the caution opined by Lord Sumption in *Prest*.[75]

With respect to the relationship between a parent/holding company and its subsidiary, the Nigerian courts have also shown a willingness to disregard the corporate personality of the subsidiaries and regard both the parent company and its subsidiaries as one unit. In *Union Beverages Ltd.* v *Pepsi Cola International and others*,[76] the Supreme Court of Nigeria noted that if two companies were shown to be one, for all intent and purpose, then the court will pierce the corporate veil to hold the companies liable for the actions of the other. In all, the position on corporate personality differs in the three common law jurisdictions examined.

5.0. CONCLUSION

The independence of companies is a necessity for its operations. This assertion influenced the establishment of the principle of separate legal personality. However, the excessive reliance on the principle became an instrument of fraud and impropriety, thus necessitating the need for checks by the courts and the legislature. Despite being common law jurisdictions, the approach of US (California), UK, and Nigeria to limiting the application of this principle differs. The UK courts appear to be keen on restricting the interference with a company's legal personality, a position which is understood, noting the reason why that status is conferred on corporate entities. However, such a restrictive approach is not the best, especially because group structures are being used to perpetrate fraud and impropriety. The instances where the court will pierce the veil must also evolve as

[74] *Mezu* v *Co-operative and Commercial Bank (Nig.) Limited* [2013] 3 NWLR (pt1340) 188.
[75] *Prest* v *Petrodel Resources Limited and Ors*., *supra* n 27.
[76] *Union Beverages Ltd.* v *Pepsi Cola International and others* (1994) 2 SCNJ 157.

modern devices emerge, else the veil will become an ever-growing wall which shields impunity. Furthermore, the circumstances under which the Nigerian courts will lift the veil of incorporation for the purpose of paying regards to the economic realities behind the legal facade of incorporation are well defined. They include: where the number of members fall below the statutory minimum; where the company has been carried on in a reckless manner or with intent to defraud creditors; and where the company is a sham. Although the foregoing is not exhaustive of the circumstances under which the Nigerian courts will lift the veil of incorporation, the common trend in all the circumstances is that the company involved must have been guilty of some improper conduct to warrant the lifting of the veil to see who was behind the improper conduct.