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Separate Corporate Personality and Creditor Protection: Defining the Limits of Limited Liability

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ABSTRACT

Separate corporate personality and limited liability support organised enterprise, but their relationship to creditor protection is frequently obscured by treating every claim against a shareholder, director or parent company as an attempt to pierce the corporate veil. This doctrinal and conceptual article distinguishes legal personality, shareholder liability, asset ownership and responsibility for independently wrongful conduct. Drawing on selected Cambridge and Yale scholarship, United Kingdom legislation and leading judgments, it develops a structured approach to identifying the appropriate basis of creditor protection. The analysis examines the narrow evasion principle, trust-based reasoning, directors' duties during financial distress, wrongful trading and direct parent-company responsibility. It argues that coherent protection depends on selecting the correct legal route and considering the interests of creditors beyond the immediate claimant. The proposed framework preserves the explanatory value of corporate separateness while resisting the assumption that incorporation removes accountability for conduct governed by ordinary legal principles or specific statutory duties.

KEYWORDS: corporate personality; limited liability; creditor protection; corporate veil; directors' duties; insolvency.

1. INTRODUCTION

The statement that a company is separate from its shareholders is foundational, but it does not answer every question about liability within a business. A company can own property and incur obligations independently while a director, shareholder or parent company remains responsible for a separate undertaking or wrongful act. Failure to distinguish these questions can make both creditor protection and corporate certainty appear more absolute than the law supports. Public discussion often describes any decision imposing liability beyond the immediate company as piercing the corporate veil. That description can be misleading. A court may identify the true ownership of property, enforce a guarantee, apply a statutory provision or recognise a defendant's own duty. These routes do not necessarily disregard the company's legal existence. This article argues for analytical separation. Creditor protection should begin by identifying the obligation, the relevant defendant, the asset concerned and the source of responsibility. The contribution is a structured framework that explains why limited liability has boundaries without reducing those boundaries to an unrestricted judicial power to achieve a preferred outcome.

Doctrinal Method and Scope:

The analysis examines selected English and United Kingdom authorities, including *Salomon v A. Salomon & Co. Ltd* (1896), *Prest v Petrodel Resources Ltd* (2013), *Okpabi v Royal Dutch Shell Plc* (2021) and *BTI 2014 LLC v Sequana SA* (2022). It also considers section 3 of the Companies Act 2006 and section 214 of the Insolvency Act 1986. Scholarly interpretation draws on six articles published in Cambridge journals and The Yale Law Journal. These include doctrinal analysis, comparative policy discussion and economic arguments about asset partitioning and tort liability. The Yale contributions are scholarly articles in a student-edited law journal. The method is a focused doctrinal and conceptual analysis, not an exhaustive account of corporate liability or insolvency remedies. The authorities provide a comparative framework for common-law scholarship. Their application in Guyana cannot be assumed without examining domestic legislation and relevant local or appellate authority. The discussion distinguishes holdings, judicial reasoning and scholarly proposals. It also distinguishes procedural decisions about whether a claim may proceed from final determinations of liability.

This is particularly important in litigation involving corporate groups, where a jurisdictional decision may leave substantive questions for later adjudication.

Personality, Limited Liability and Asset Separation:

Separate personality identifies the company as a legal person. *Salomon v A. Salomon & Co. Ltd* (1896) establishes the significance of lawful incorporation notwithstanding concentrated ownership and control. The company's existence cannot simply be ignored because one individual dominates its business. This principle supports a stable distinction between the company's affairs and those of its members. Limited liability addresses a different question: the extent of members' responsibility by reason of their membership. The Companies Act 2006 recognises limited and unlimited companies and defines a company limited by shares by reference to any amount unpaid on members' shares (s. 3). Corporate personality therefore does not logically require limited liability, and limited liability does not mean that the company's own obligations disappear. Asset ownership is a third question. A shareholder's ownership of shares does not by itself establish personal ownership of every corporate asset. Equally, the registration of property in a company's name may require examination where an independent trust or other proprietary relationship is alleged. The correct inquiry concerns the legal basis of ownership rather than an assumption that control resolves it. Dignam and Canruh (2025) distinguish forward veil piercing, associated with limited liability, from reverse piercing, which affects the separation protecting corporate assets from a controller's creditors. Their analysis shows why the direction of a claim matters. A remedy that assists one claimant may also affect creditors who relied on the company's separate asset pool. Hansmann and Kraakman (2000) provide an economic explanation for keeping these distinctions separate. Their account emphasises the protection of organisational assets from claims by an owner's personal creditors, treating this allocation of creditor rights as a central function of organisational law. This analysis shifts attention from shareholder protection alone to the stability of the enterprise's own asset pool. It also explains why an intervention described as creditor-friendly must identify which creditors benefit and which previously protected assets become exposed.

The Narrow Role of Veil Piercing:

Prest v Petrodel Resources Ltd (2013) distinguishes concealment from evasion. Concealment involves identifying facts or relationships hidden by a corporate structure through ordinary legal analysis. Lord Sumption's evasion principle concerns the deliberate frustration of an existing obligation through the interposition of a controlled company, with a limited residual role for piercing. The Court resolved the disputed property issue through resulting trusts rather than by generally disregarding the companies' personality (paras. 28, 35, 52). The distinction limits the usefulness of broad labels such as sham or facade. Such language may express suspicion without identifying the legal mechanism. A claimant still needs to explain whose obligation is involved, how the company affected its enforcement and why an ordinary cause of action is insufficient. Allan and Griffin (2018) develop a scholarly argument for greater use of trust-based reasoning after Prest. Their proposed development should not be confused with a general rule already adopted by the courts. Its analytical value lies in insisting that proprietary and equitable principles deserve examination before veil piercing is invoked as an all-purpose explanation. The framework developed here treats piercing as a question reached after the legal relationships have been identified. This sequence promotes precision and avoids the assumption that an unsatisfied creditor automatically establishes abusive incorporation. Commercial failure and legally actionable misuse are different propositions, even though they may occur together. Payne (1997) examined the fraud exception against the background of Salomon and the use of companies to evade existing legal obligations. This earlier scholarly treatment helps locate the historical problem to which later doctrinal distinctions respond. Because it predates Prest, it cannot establish the current reach of the evasion principle. Its value here is explanatory: the concern is the relationship between incorporation and a particular obligation, requiring careful identification of the conduct complained of.

Creditor Protection Through Ordinary Obligations:

A person may accept responsibility through an independent undertaking. A shareholder who gives a valid personal guarantee is liable according to that undertaking and the governing law, rather than simply because the shareholder owns the company. The conceptual distinction matters because the obligation is voluntarily assumed outside the ordinary consequences of membership.

Likewise, responsibility for a defendant's own wrongful conduct does not necessarily depend on transferring another entity's liability. The analysis should identify the relevant duty, breach, causal connection and remedy under the applicable cause of action. Corporate office is neither a universal source of personal liability nor a universal immunity from it. These distinctions help creditors evaluate their position before a dispute. The identity of the contracting party, the ownership of relevant assets and any separate security or undertaking

should be clear. A business relationship with a well-known group does not necessarily mean that every group member stands behind the obligation. Contractual protection nevertheless has limits. Some creditors can investigate, negotiate and price risk more effectively than others. Involuntary claimants may have had no opportunity to select a debtor or obtain protection. The policy analysis should therefore distinguish categories of exposure rather than assume that all creditors accepted the same bargain on comparable terms. Hansmann and Kraakman (1991) challenge the economic justification for limited liability in tort and examine a regime of proportionate unlimited shareholder liability. Their proposal foregrounds the inability of involuntary victims to negotiate protection before harm occurs. It is a reform argument in a student-edited law journal, not a description of an existing general rule. The distinction strengthens the present analysis by showing that the efficiency rationale for voluntary financing cannot simply settle the allocation of losses to people who never chose to become creditors.

Corporate Groups and Direct Parent Responsibility:

Corporate groups create a particularly important risk of conceptual confusion. A parent's shareholding and a subsidiary's operations may be closely connected economically while remaining legally distinct. The question whether the parent owes its own duty requires examination of the relevant conduct and legal principles, not merely the existence of the group. *Okpabi v Royal Dutch Shell Plc* (2021) concerned whether the pleaded parent-company negligence claim raised a real issue to be tried in the jurisdictional context. The Supreme Court allowed the appeal and emphasised the ordinary principles applicable to a parent's involvement in relevant activities. The decision did not finally establish liability for the alleged environmental harm, and it should not be described as a general piercing of the corporate veil (paras. 143-151, 153-160). The analytical lesson is that organisational practice matters. Formal policies, actual management arrangements and the allocation of responsibility may bear on a claim that the parent itself undertook or participated in relevant functions. A diagram of ownership alone cannot establish the complete legal position. For governance, the appropriate response is clarity about responsibility and effective performance of assumed functions. Artificially ambiguous arrangements can make accountability difficult without ensuring legal protection. The present argument concerns the quality of governance and legal analysis; it does not suggest that groups should avoid responsible oversight in order to minimise exposure. Anderson (2011) examines Australian responses to asbestos-related group liabilities and argues that the reforms considered were inadequate to protect tort creditors of insolvent subsidiaries. This comparative scholarship highlights the problem of claims whose consequences emerge long after the relevant activity. It does not supply an additional holding in Okpabi or a current statement of Australian law. For the framework developed here, it identifies a distinct policy question: whether the available asset pool and remedial structure remain adequate for foreseeable categories of delayed harm.

Financial Distress and Directors' Responsibilities:

Creditor protection becomes particularly significant when a company's financial position deteriorates. *BTI 2014 LLC v Sequana SA* (2022) confirms that creditors' interests can become relevant within directors' duties to the company. It rejects a separate duty owed directly to creditors and holds that a merely real, non-remote risk of future insolvency was insufficient on the facts. The judgments address insolvency, proximity to insolvency and probable insolvent liquidation or administration, while differing on aspects of knowledge and formulation (paras. 11-14, 88-90, 203). The practical implication developed here is that financial distress requires informed decision-making rather than reliance on labels. Directors need credible information about obligations, liquidity and plausible future outcomes. A superficially solvent balance sheet may not answer every question about the effect of a proposed decision, while business risk alone should not be confused with the specific legal thresholds discussed in Sequana. Section 214 of the Insolvency Act 1986 provides a distinct statutory route concerning wrongful trading. Subject to its conditions, a court may order a contribution to the company's assets where the relevant director knew or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation or administration. The provision also addresses the steps that ought to have been taken to minimise potential creditor loss (Insolvency Act 1986, s. 214). The distinction between routes remains important. A duty to the company, a statutory contribution and a creditor's direct claim have different requirements and beneficiaries. Combining them under a general assertion that directors become liable when a company is insolvent obscures the work performed by each doctrine.

Reverse Claims and Competing Creditors:

A creditor pursuing a controller's debt may seek access to assets held by a company. That claim raises different concerns from making a shareholder answer for a corporate debt. Other shareholders and the company's own creditors may have interests in the same assets. A remedy focused exclusively on the immediate claimant can displace losses onto parties who were not responsible for the controller's conduct. Dignam and Canruh (2025) propose a more coherent approach to reverse piercing while emphasising wider third-party considerations. Their

contribution is a reform analysis, not authority for an unrestricted existing remedy. It reinforces the need to ask whose assets and whose creditor relationships would be affected by the proposed intervention. The policy implication is that creditor protection should be assessed collectively as well as individually. A rule that improves one claimant's recovery may weaken the predictability of another creditor's position. Courts and legislators therefore need clearly specified triggers, attention to reliance and an account of priority. Moral disapproval of a controller cannot by itself resolve these distributional questions.

A Structured Liability Analysis:

The proposed framework begins by identifying the obligation. Is it the company's contractual debt, a controller's pre-existing obligation, a director's duty or a parent's alleged responsibility for its own conduct? The answer determines which legal questions should be examined and prevents a vague appeal to group control from doing excessive work. The second step identifies the asset or remedy sought. A proprietary claim differs from a personal claim for payment. A contribution to an insolvent estate differs from direct compensation to an individual claimant. The analysis should state who would receive the remedy and whose position might be affected. The third step identifies the legal route and its elements. Ordinary contractual, tortious, proprietary or statutory principles should be examined before exceptional disregard of personality is considered. Each route requires its own evidence. A factual pattern that supports one form of responsibility may be insufficient for another. The fourth step examines competing interests and procedural posture. Other creditors, minority shareholders and parties relying on separate assets may be affected. The decision-maker must also distinguish whether the court is assessing arguability, determining a preliminary issue or deciding the merits after evidence has been tested. The final step states the limits of the conclusion. Establishing an arguable claim does not establish liability. Establishing liability does not guarantee recovery. Identifying abusive conduct does not automatically identify the correct defendant or remedy. These distinctions make legal analysis more useful to both commercial decision-makers and scholars.

Implications and Limitations:

For businesses, the framework supports accurate contracting, clear records of asset ownership and disciplined decisions during financial distress. It also encourages boards to document the reasons for material transactions and the responsibilities actually undertaken within a group. These practices improve accountability without assuming that documentation alone prevents liability. For scholarship, the framework suggests evaluating creditor protection by the fit between the harm, legal route and remedy. Further comparative research should examine how jurisdictions distribute risk between voluntary and involuntary creditors and how enforcement capacity affects the practical value of formal rights. The article's principal limitation is its selective jurisdictional base. Corporate and insolvency rules vary, and the chosen authorities do not resolve every issue involving multinational groups, asset transfers or fraudulent conduct. Any extension requires careful attention to the relevant statutory framework and procedural setting.

2. CONCLUSION

Separate corporate personality and creditor protection are best understood through precise distinctions rather than competing absolutes. Limited liability concerns membership; it does not erase independent obligations, determine every proprietary relationship or displace specific statutory responsibilities. A coherent analysis identifies the obligation, defendant, asset, legal route and affected interests before invoking exceptional remedies. This approach preserves commercial predictability while ensuring that incorporation does not become an unexplained answer to every claim of legal responsibility.

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