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Is the "Evasion Principle" for Veil Piercing too unclear? Are we witnessing the downfall of the doctrine in light of Prest v Petrodel?

Fouzia Khaliq
Lecturer in Law, Mirpur University of Science and Technology (MUST)
Ch.fouziakhaliq123@gmail.com
Arooj Aziz
Lecturer, Mirpur University of Science and Technology (MUST)
arooj.law@must.edu.pk
Muhammad Usman Subhani
Lecturer, Mirpur University of Science and Technology (MUST)
usmansubhani333@gmail.com

ABSTRACT
In the corporate world of today, the phrase "lifting of the corporate veil" or 'disregarding of the corporate personality' is frequently used. The separate legal personalities of a company and its shareholders have frequently been asked to be disregarded by English courts. However, the UK courts hardly ever respond to this matter. The courts frequently state that they are reluctant to remove the corporate veil. In almost all situations, they attempt to preserve the corporate legal entity, even if doing so would require lifting the corporate veil and ensuring justice. This dissertation takes an effort to explain the hesitant attitude of the UK courts. In this context, references to a few cases have been made in order to understand the anatomy of the unwilling approach.

Keywords: *Corporate Veil, Veil Piercing, Evasion Principle, Separate Legal Personality, Prest v Petrodel, UK Company Law, Corporate Legal Entity, Judicial Reluctance, Shareholder Liability.*

Introduction

The word 'corporate veil' indicates the difference between the company as being a separate legal entity, and the shareholders who have control over the shares of the company. The use of 'piercing' or 'lifting' the veil is to determine the roles of the shareholder in the company, and how their dominant actions may hurt the company which they use as a guise to escape any sort of liability that may fall on them.

Prest v Petrodel[1] is the seminal judgment demonstrating how the English Supreme Court clarified the law of veil-piercing. This was important as several cases were brought where the parties tried going around the separate personality of companies. However, the doctrine was never truly well received, the fondness of which came into question by the UK Supreme Court in VTB Capital v Nutritek International Corp[2], where the existence of the doctrine came into question altogether. This is why the decision of *Prest* is so important; it was somewhat of a confirmation by the Supreme Court of the doctrine's existence, which ultimately left unanswered issues such as declaring the evasion principle as a ground for veil-piercing as opposed to concealment, leaving only Jones v Lipman[3] and Gilford v Horne[4] as good law. The decision curtailed the scope of the doctrine even further by the introduction of the 'rule of last resort' the nature of which serves as a remedy that is barely applied in practice. The Court of Appeal in Gramsci Shipping Corporation v Lembergs[5] even denied any clear rationale, thus it is appropriate to question where the doctrine stands today.

Thus, discussing the principle case of *Prest* is pertinent, the main elements of the UK Supreme Court's judgment, specifically Lord Sumption's views, later taking into account the evasion principle as the grounds for veil piercing. Further comparative analysis and discussions that distinguish the evasion and avoidance of any legal obligations that are enforced with the use of other common law jurisdictions (namely Argentina and France), then seeing the various criticism in the case of *Prest*, and how the evasion principle aids in corporate abuse. Lastly, it is important to discuss whether the principle has seen a downfall in recent years, concluding that where it is not entirely right to establish outright downfall, the principle has certainly seen immense change and has evolved greatly in recent years, though a clear scope for the application remains unclear, the Supreme Court has made no effort in avoiding this criticism after *Prest*.

Piercing the Corporate Veil after Prest: The Judgment

1. The case of Prest

Since the case of Aron Saloman v A Saloman & Co Limited (Saloman)[6], the UK courts have established that company law has its own separate identity from its employees and shareholders. The UKSC had stated that the members of the company are not to be held liable for the company's debts, other than the initial financial contribution. Nonetheless, there have been instances where the courts had to "pierce the veil". This was to hold the members liable for acting illegally under the guise of the corporate entity itself. This has become the case since *Prest*, where it has been confirmed that piercing the veil should be done as a last resort[7].

The case of *Prest* was a matrimonial case that was held under the Matrimonial Causes Act 1973, under which the High Court awarded Mrs. Prest a settlement of 17.5 million pounds. However, the assets of Mr. Prest had been tied up in the company, which was solely controlled by him. The High Court used section 24 (1)(a) of the Act, utilizing its powers to lift the veil, and ordered the company to transfer the relevant properties to be transferred to Mrs. Prest. Mr. Prest later appealed this decision and argued that the property did not belong to Mr. Prest, but was an asset of the company. The Court of Appeal accepted his appeal and stated that the veil could not be lifted in these circumstances and that the High Court had no jurisdiction to lift the veil. When Mrs. Prest re-appealed on the grounds that the properties were held in trust by the company which had benefited Mr. Prest, this could form part of a divorce settlement. The Supreme Court unanimously allowed the appeal, but not on the grounds of piercing the veil, and reduced the instances on which the veil could be actually pierced.

Moreover, Lord Sumption had reviewed the case based on piercing the veil and had held that the court may be justified in piercing the veil if the company's separate legal personality is being abused has been well established by the authorities and consistent with the approach of the

[1] *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34

[2] *VTB Capital Plc v Nutritek International Corp and others* [2013] UKSC 5, [2013] 1 All ER 989

[3] *Jones v Lipman* [1962] 1 WLR 832.

[4] *Gilford Motor Co Ltd v Horne* [1933] Ch 935.

[5] *Gramsci Shipping Corporation v Lembergs* [2013] EWCA Civ 730

[6] *Salomon v A Salomon & Co Ltd* [1897] AC 22

[7] All Answers ltd, 'Prest v Petrodel' (Lawteacher.net, December 2022) <https://www.lawteacher.net/cases/prest-v-petrodel-resources.php?vref=1> accessed 22 December 2022

English law in the problems raised with the use of the legal concepts in order to defeat mandatory rules of law.[8]
The courts, more, in particular, the two judges, Lord Sumption and Lord Neuberger had considered that there were very limited circumstances in which piercing the veil will be an appropriate action.[9]

2. **The Judgement by Lord Sumption**

The reason behind Lord Sumption's decision is predicated on the premise that precedent supports the existence of a doctrine (the 'doctrine', to use Lord Neuberger's terminology) that permits the courts to pierce the veil in 'exceptional circumstances', therefore, restricting the doctrine to be only applicable in 'true' veil-piercing situations. It must be separate from other strategies for circumventing separate legal personality, such as agency or trust. It can be said that the actual result of *Prest* serves as an example of how to get around legal personality in this broader, looser sense.

a) *the restricted definition of piercing the corporate veil*

According to Lord Sumption, 'true' veil piercing ignores the separate legal personality and identifying its controlling shareholders. Lord Sumption concludes that the abuse of the corporate legal personality is the only reason to apply the theory going forward, following the most contentious portion of this decision, asserting that corporate abuse could only be justified under the 'evasion principle' and not the ''concealment principle. Under the evasion principle, controlling shareholders attempting to evade existing legal obligations using the company's separate legal personality constitutes abuse. Lord Sumption asserted in *Prest*, that concealment would not be ground for veil-piercing and cited **Trustor v Smallbone**[10] and **Gencor v Dalby**[11] as references to back his argument. He further concludes by stating that veil-piercing is a remedy of last resort, only to be used where there is no alternative legal remedy available.
Thus, true piercing of the corporate veil, according to Lord Sumption, entails ignoring the separate legal personality and identifying the controlling shareholder to the company (or vice versa). In this precise meaning, piercing the corporate veil is different from other circumstances that have also been referred to as veil-piercing in the past, where the law may turn to the shareholders rather than the company[12].

b) Owner shielding v. Entity shielding

One of the main tenets of Lord Sumption's judgment was to elucidate more on the circumstances under which the company's veil will not be able to guard the shareholders against claims by third parties.
From an economic standpoint, the separation of the company from its shareholders commonly follows two primary aims[13]. Firstly, the shareholders are to be protected from the company's creditors (known as 'owner shielding'), and secondly, to protect the company from the shareholders' creditors (known as 'entity shielding'). Together known as 'asset partitioning', they are generally regarded as being two sides of the same coin, as they work well for reducing the costs of the operation of companies in the market economy[14].
This occurs due to creditors of the shareholders or the company emphasizing monitoring and evaluating the financial position of one person or entity. Alternatively, this asset partitioning permits each company and its shareholders to focus on different kinds of economic activity while avoiding the chance of sharing liability emerging from such activities. Thus, according to this viewpoint, owner and entity shielding are interdependent functions that cannot be taken into account separately because any changes to either of them could tip the scales in favor of the company's and shareholders' creditors.
These economic functions were a big problem in *Prest*, so Lord Sumption focused first on the owner-shielding function carried out by companies. He fervently argued against holding shareholders liable for the company's debts in order to uphold this aspect of the structural effects of corporate personality.
He claimed that there is no chance of challenging the legislator's free choice to engage in any economic activity using the company as a means of limiting civil liability[15]. That is the essence of incorporation, according to Lord Sumption. Since the legislature has explicitly allowed people to make this choice for more than 150 years, up until the Companies Act of 2006, this particular domestic legal arbitrage regarding the mode of conducting business cannot be seen as abusive.
In reality, maintaining the company's separate legal personality has long encouraged investment activity. This is because it gives shareholders the option to invest their money in different businesses while fully understanding the risk involved.
However, Lord Sumption emphasized that in some circumstances the company may be held accountable for the debts that its shareholders have incurred. In these situations, the company was founded primarily with the intention of evading or frustrating its owner's prior legal obligations or restrictions. This position's foundation is found in Lord Denning's dictum in Lazarus Estates Ltd. v. Beasley[16], which discusses the general concept of fraud.
It expresses a principle that a legal advantage may be frustrated if it is achieved in a dishonest way. In the past, the dishonesty of an act was described inter alia with the term 'facade' or 'sham', both of which were too vague in Lord Sumption's view[17]. Instead, he addressed this issue by offering his own definition of the wrongdoing which would constitute the abuse of the company's separate legal personality. The overall result of this thought process is the evasion principle. This is the next part of Lord Sumption's speech which will be deliberated upon.

c) Concealment v. Evasion

Lord Sumption discussed the underlying basis of the notion of piercing the veil. His analysis often begins with the premise that English law forbids the piercing of the veil because allowing so would be against justice. Instead, there must be some element of dishonesty, formerly known to be the 'fraud exception'.[18]
According to *Trustor*, this applied in cases when the company was a "façade or sham"[19] or engaged in 'impropriety'. The latter was restricted by the requirement that the improper activity be "related to the use of the

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[8] 'Piercing the Corporate Veil: A Limited Principle Under English Law – Prest v Petrodel' <https://brownrudnick.com/alert/piercing-the-corporate-veil-a-limited-principle-under-english-law-prest-v-petrodel/> 22 December 2022

[9] Alan Dignam, Company Law (11th edn, Oxford University Press 2021).

[10] *Trustor Ab v Smallbone and Another (No 2) [2001] Ch 384*

[11] *Gencor ACP Ltd & Ors v Dalby & Ors* [2000] 2 WLR 1421 (HL)

[12] Prest (n 6)

[13] R. Kraakman et al., The Anatomy of Corporate Law: A Comparative and Functional Approach (2nd edn, Oxford University Press 2009)

[14] Mucha, Ariel, 'Piercing the Corporate Veil Doctrine under English Company Law after Prest v Petrodel Decision' (2017) Allerhand Working Papers, available at <https://ssrn.com/abstract=2962934 or http://dx.doi.org/10.2139/ssrn.2962934> 24 December 2022

[15] Ibid

[16] *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702

[17] Mucha, Ariel, 'Piercing the Corporate Veil Doctrine under English Company Law after Prest v Petrodel Decision' (2017)

[18] Ibid

[19] *Woolfson v Strathclyde Regional Council*, 1978 SC (HL) 90, 96.

company structure to avoid or conceal liabilities." While acknowledging that there must be some sort of violation here, Lord Sumption rejected the conventional "façade"/"sham" test (if there ever was one) as being too ambiguous. The old "façade"/"sham" cases, he claimed, actually relied on two different principles: the evasion principle and the concealment principle.

Lord Sumption was prepared to accept the evasion cases as good law, not the concealment cases. In *Trustor* and *Gencor*, he claimed, it had been improper to pierce the veil for the purpose of concealment. He thought that the only real justification for piercing the corporate veil was the evasion or frustration of existing obligations. He used *Gilford* and *Jones* as authority to back his argument.

Gilford was an accurate case of veil-piercing because Horne had utilized the company as a platform for competing trade which was illegal for him personally, frustrating his existing obligations. The same holds true for *Jones*. Lord Sumption adopted the evasion principle as a sound justification for piercing the veil in order to stop corporate abuse as a result. He stated: "These considerations reflect the broader principle that the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement"[20]. Indicating and confirming his strong inclination toward the evasion principle, the principle was immediately clarified by Lord Sumption in the next paragraph for being the *only* category that justified veil piercing.[21]

So, *Gilford* and *Jones* were set apart from *Gencor* and *Trustor* because in those cases, the companies had only been utilized to conceal the genuine recipient of payment rather than to evade or frustrate an existing liability.

A director of a company (Mr. Dalby) in *Gencor* was deemed liable for a payment they received from a third party. Instead of going to him directly, this payment was made through his Virgin Islands-based company. Rimer J. pierced the veil in this case on the grounds of 'fraud' upon finding that the Virgin Island company was only just utilized as a nominee, much like Mr. Dalby's bank account. Lord Sumption argued that this was not crucial. In this situation, the law should not have pierced the company's veil, but, instead, the law would consider the facts of the transaction and assigned Mr. Dalby responsibility for the payment. In *Trustor*, Mr. Smallbone had transferred the embezzled funds to a company that he alone controlled.

According to Lord Sumption, the corporate veil should not be pierced in order to resolve these two issues[22], because, firstly, he contended that if the contribution had been accepted by a closely related party, such as a spouse, Mr. Dalby (and Mr. Smallbone) would have been held accountable in the same manner. Therefore, piercing the corporate veil could not be the answer. Secondly, there would have been no claim at all to evade if Dalby/Smallbone had not been given credit for the receipt. To prove that there was an illegal payment at all, the company had to attribute the receipt to the controller. There would not have been any restitution if the companies had gotten the payment on their own. The companies were only utilized to conceal the fact that an illegal payment had been made. They were not abused to evade an existing obligation.

Lord Sumption also quoted the latter argument in his explanation of *VTB*. A bank provided financing for an arms-length transaction that was actually an intra-group transfer[23]. Here, Malofeev was in charge of both companies. According to the claimant bank, this constituted fraud, which should allow for the piercing of the corporate veil and the subsequent personal liability of Mr. Malofeev for the loan made to the purchasing company. The Supreme Court and the Court of Appeals both rejected this claim. Lord Sumption asserted that piercing the veil in this situation would have produced a *newer* liability that would not have otherwise existed. Thus, it was held that by interposing a company, no existing liability was evaded.

d) the nature of the rule of last resort

Furthermore, 'true' piercing of the corporate veil, according to Lord Sumption, should only be used when no other, more traditional legal instruments are available. It was a secondary, last-resort remedy.[24]

However, in *VTB,* the Court of Appeal stated that it was not *necessary* for the doctrine of veil-piercing to be seen as a matter of last resort. Lord Sumption, of course, rejected Lord Lloyd's proposition in the case and, instead, cited **Ben Hashem v Al Shayif (2009)**[25] as the authority.[26] This is highly questionable given Lord Munby used the word 'necessity' not 'last resort'. The two are very different in meaning. The strength of this reasoning is doubtful in this regard.

Even more so, Lord Sumption's strategy was endorsed by Lord Neuberger as well. He did not, however, refrain from reiterating his fundamental skepticism on the existence of legal veil piercing, which he had previously expressed in *VTB*[27]. In particular, he persisted in saying that the cases of *Jones* and *Gilford* may have been resolved differently, much as he had done in *VTB* after **Yukong Lines.**[28]

3. **Other Views on Evasion**

Although there had been no member of the court which had brought a developed alternative to the analysis of the evasion and concealment principles, they also did not give their absolute support on the matter. Lord Neuberger, however, did approve of the concept of evasion, but at the same time disagreed upon it, especially regarding the cases of *Gilford* and *Jones* which he had analyzed as concealment. Thus, Lord Neuberger took the view that there was no English case that could underpin the power to lift the veil. However, he did indeed support the recognition of limited power as a 'valuable judicial tool to undo wrongdoing' in such cases where there was no solution available.

It is seen that these two cases (*Gilford* and *Jones*), were vital for Lord Sumption's refinement of the evasion principle, which had been seconded by Lord Clarke that the veil-lifting doctrine existed, however, it stated that the evasion and concealment principle analysis must not be adopted without a fuller and in-depth argument.

Lord Mance and he had felt that in case there is an event where the legal personality has any exception it should not be foreclosed, though this is a very rare occurrence. Lord Walker had elected a more conservative approach by denying the existence of a separate doctrine which allows courts in lifting the veil. Lady Hale along with Lord Wilson had doubts on it being possible in fitting these precedents into concealment and evasion classes.Nevertheless, she cited examples of means of 'going behind' the veil. In keeping Lord Sumption's narrow definition in mind and regarded it as an apparent rather than a true exception.

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[20] Ibid

[21] Ibid

[22] Ibid.

[23] Ibid

[24] Ibid

[25] *Ben Hashem v Al Shayif*, [2009] EWHC 864 (Fam)

[26] Ibid

[27] *VTB Capital Plc v Nutritek International Corp and others* [2013] UKSC 5, [2013] 1 All ER 989 [134]

[28] *Yukong Line of Korea v Rendsburg* [1996] UKHL 14, [1998] AC 605

Lady Hale suggested that some of the cases may be explained via the principle which was against the company controller where they take advantage of the third party. She further mentioned the decision which had been taken in **Stone & Rolls Ltd v Moore Stephens**[29] with respect to the issue that the case has been better regarded not as veil-lifting but rather in a loose sense as involving the attribution of the company and its knowledge and acts which are deemed as appropriate in applying the legal rules to the company. So in short veil-piercing aims to make and apply a remedy against an individual in obligation to another.

Evasion Principle as a Ground for Veil Piercing

1. **Evasion Principle as formulated by the UK Supreme Court**

Thus, to summarize, piercing the veil is only justified under the evasion principle, which was founded on Lord Sumption's examination of earlier case law, and had the backing of the majority of the Supreme Court justices. Both Lord Neuberger and Lord Mance formally support the idea. Both the cases and the suggested rationale for the evasion principle are accepted by Lady Hale (with whom Lord Wilberforce concurs). It can be seen that a resounding majority has determined that the evasion principle initiates veil piercing. *Prest* has established a clear legal principle as a result.

However, whether piercing the veil is exclusively triggered by evasion or whether the category of evasion is just a notable case of a wider principle to pierce the veil in circumstances of corporate abuse is the primary question that *Prest* left unresolved. By carefully examining the viewpoints, it is possible to state that, as seen above, the evasion principle is not exhaustive, it is yet the *only* case of piercing the veil for corporate abuse that is spelled out.

In contrast, Lady Hale explained that the fundamental idea was to stop corporate abuse, to prevent companies from being used as engines of fraud. Lord Mance adopted Lord Sumption's approach but expressly disapproved of his assertion that the evasion principle is exclusive. In fact, Lord Clarke rejected the classifications outright. Lord Walker did not even accept the idea of piercing the veil.

We can, thus, draw the conclusion that Lord Sumption's proposed (re)statement that only evasion results in piercing the veil cannot be regarded as the law. However, does this warrant the interpretation that the UK Supreme Court adopted the wider view according to which the veil will be pierced for corporate abuse, in order to pr‘event companies being used as engines of fraud’?

This seems unlikely. Yes, Lord Sumption did hold that evasion constitutes corporate abuse.[30] However, in his opinion, *only* evasion is abuse that triggers piercing the veil under the ‘limited principle’ that he presented.[31] The same can be said about Lord Neuberger, despite believing that the principle of evasion was a subset of the greater theory that ‘fraud unravels everything’.[32] Both justices had been clear that they saw no other instances of any veil piercing. Their believe was that evasion is abuse but, it is also a trigger. Even though the majority did not agree with this, it may be impossible for any reconsideration on this matter and for any sort of agreement that piercing the veil should be triggered by the unclear scope of corporate abuse rather than evasion. This may even go against the tenet of their argument, which was that the façade/sham test could not discover the necessary ‘impropriety’.[33]

While supporting the evasion principle, Lord Mance and Lord Clarke do not find that there is any firm confinement to the principle. However, that does not imply that they adopt Lady Hale's expansive approach[34] (as will be seen in Chapter IV Section 1). In fact, they do neither explicitly nor implicitly support a more comprehensive theory of exposing corporate abuse. They only wish to leave the option open if a rare instance of a specific type of abuse occurred and could not be addressed by more traditional remedies, reiterating their confinement to the rule of last resort.

Thus, this leads to the following conclusion in respect of the arguments formulated above:

- Evasion amounts to corporate abuse. However, rather than the broader idea of corporate abuse, the narrow evasion principle serves as the catalyst for the remedy of veil-piercing.
- The justification for lifting the veil on corporate abuse is not limited to the evasion principle. However, it is the only situation after *Prest* that is explicitly stated and relevant.
- Other instances of corporate abuse may result in the remedy in the future, subject to the principle of last resort. However, they are not yet spelled out and will be uncommon. Although abandoned, the façade/sham test has not been replaced.

This leads to the discussion of how this restricted principle in the UK operates in other jurisdictions, which have a much broader and readily applicable principle set in place, mainly that of Argentina and France (though much restrictive in comparison to Argentina’s, still broader than the UK’s). This comparative analysis is pertinent for the discussion that takes place in Chapter IV.

2. **Jurisdictions in Other Countries**

It is important to see what other jurisdictions conduct the law on the principles relating to veil-piercing. We will specifically use France and Argentina’s examples to draw a comparative analysis of how the doctrine exists on a wider scope. The term ‘lifting the veil’ is a key expression that is used in England, In Argentina, however, it is called ‘abuso de la personali’, and in France ‘la levée du voile’.

In French and Argentine law, the idea of ‘simulation' exists. It relates to the act of creating a false appearance to deceive others and applies in the context of lifting the corporate veil when a company has been created with the sole purpose of hiding the true identity of the person behind it or defrauding creditors or other parties. They differentiate between *action Paulina* and *Dolus* and have the same effects.

Effects of locating fictitiousness and simulations are comparable to ‘lifting the veil’ here. It has extreme effects and it does not take into account any legitimate modern needs concerning limited liability. This affinity is towards the recognition of the one-man company.

The French judges have taken up the view that the directors who had gone into business under the company’s cloak can be made to be personally bankrupt as they had identified themselves as the company. This decision had drawn the “f*raus omnia corrumpit rule*” and “*socidtd fictive principles*”.

“*Dolus*” or fraud which refers to the act performed by an individual with a clear understanding of the consequences of his intentions. If the courts take notice that the contract is concluded because of the intentional fraud of a party, the party that has proved innocent can claim to nullify the contract and claim damages from the third party. In the context of the company, the entire notion of “*dolus*” is used to solve any issues that arise from sheltering evasion

[29] *Stone & Rolls Ltd v Moore Stephens*, [2009] UKHL 39

[30] Ibid

[31] Ibid

[32] Stephen Bull, Piercing the Corporate Veil - In England and Singapore (2014)

[33] Mujih, Edwin (2016) Piercing the Corporate Veil as a Remedy of Last Resort after Prest v Petrodel Resources Ltd: Inching towards Abolition? Company Lawyer, 37 (2), 39-71.

[34] Ibid

from any contractual obligations. A person creating a company with the intention to violate any sort of contractual obligation that restrains him in any particular area. By claiming this remedy, *dolus* would lift the veil. In instances like this, this is seen as more than an adequate remedy.

Therefore, in seeing these two jurisdictions in both Argentina and France, these aforementioned variants of fraud have a different role to play in the problems connected to lifting the veil. Given that each remedy that is applied on a case-to-case basis has a different scope and with it different remedies, the remedies that are available in these variants mentioned above are in contrast to remedies that are provided for fraud in the legal jurisdiction of England and the US.

It can be said that the Argentine and French laws established principles on veil-piercing are much more protective of third parties and consistent with the commercial and social functions of companies than the UK. The laws in both demand a more contextual and comprehensive evaluation of the goals and actions of the company, taking into account, not only its formal structure but rather its content and social implications as well. They impose a higher standard of proof on the party arguing for veil-piercing to apply, preventing its hasty and arbitrary use as a debt-collection tactic. However, the UK focuses more on the legal form rather than the economic substance of the transaction for the parties involved. This is evident from Chapter II section 2(b) above.

However, it is interesting to note that the cases of *Prest* and *VTB* take on a more restrictive approach when it comes to piercing the corporate veil in Singapore. They employ a greater duty on the judges to identify and use a more in-depth analysis to give a more befitting remedy. However, in Singaporean courts, this is not present possibly due to the lack of argument imposed by the counsel. To counteract this the courts in Singapore have adopted a far broader approach on all aspects in comparison as well.

Prest - Criticisms

Prest was a significant accomplishment that forced the doctrine into the twenty-first century. It deserves credit in particular for eliminating the façade/sham test of the previous 'fraud exception'. This method of piercing the veil was founded on the antiquated idea that the company was merely a facade that covered up the truth and could be disregarded whenever it was necessary. The legal personality of a company is not concealed, let alone abused.[35] For the sake of all parties involved, however, as well as for the simple reason of following the law, it must be treated seriously.

A dummy company can be referred to by a variety of names in the courts. Only a few examples include 'cloak', 'instrumentality', 'sham', 'scheme', 'puppet', or 'bubble company'.[36] It is suggested that this method of disregarding the company's separate entity has gone too far[37] even though the controlling shareholder's actions are abhorrent. The judgment, therefore, exhibits the usual weaknesses and logical inconsistencies. *Prest* sought to avoid the total scrapping of the remedy by diminishing it to practical insignificance.[38] The arguments supporting the notion of 'piercing the veil' necessarily extend deeper than mere evasion, as will be demonstrated in the next section, therefore the doctrine must either be expanded upon or abandoned, the Courts, however, seem reluctant to do both.

1. Is Evasion really the *only* ground for veil-piercing?

The fact that no compelling arguments are provided for the restriction on applying the evasion principle to piercing the veil is the main objection that can be leveled against the judgment. It appears to be an arbitrary restriction created to keep the principle tightly at bay.[39] Even if it is conceded that this was the case because *Trustor* and *Gencor* involved concealment, and even if we accept Lord Sumption's analysis that the veil was only properly pierced in *Jones* and *Gilford* but not in *Trustor* and *Gencor*, this does not imply that *only* evasion can be corporate abuse.

On the contrary, the majority of lawyers would view evasion as *one* illustration of the larger concept intended to stop corporate abuse. In his words, 'it is essential if the law is not to be disarmed in the face of abuse'[40], and in this way, he justifies the recognition of the doctrine. He does not, however, elaborate on why corporate abuse should limit itself to the evasion principle.[41] This has been acknowledged in other countries, such as France and Argentina, and even the US[42], where the Supreme Court ensured companies could not 'evade their responsibilities'. This may be a better viewpoint.[43]

The strongest rebuttal to Lord Sumption's restatement came from Lady Hale (with whom Lord Wilson agreed). She, too, was aware that there was a doctrine that could pierce the corporate veil.[44] She also acknowledged that Gilford and Jones' strategy of evading existing obligations was valid. Nonetheless, she did not believe that Lord Sumption's two types of evasion and concealment were all-inclusive or that just evasion warranted lifting the corporate veil. According to her, these categories were rather to be interpreted as illustrations of the basic idea to prohibit companies from being used as 'engines of fraud'. She referred to **Re Darby**[45] to support her argument.[46]

The company here was undoubtedly established by fraudsters to conceal their engagement in the market. Although concealment was a factor and undoubtedly helped the fraudulent plan, it was not the main issue. The underlying reason for the piercing of the veil that had been caused by skimming the earnings was that they meant to utilize the company as a front for yet another fraud from the beginning.[47] There is barely any justification for contesting the verdict in this case. Nonetheless, it is surely not an evasion case. This demonstrates that the concept that only these cases were the 'proper' piercing cases up until this point is not persuasive when it comes to limiting piercing the veil for corporate abuse only to evasion cases.[48] Thus, establishing that Lord Sumption's application of the evasion principle is narrow.

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[35] Mucha, Ariel, 'Piercing the Corporate Veil Doctrine under English Company Law after Prest v Petrodel Decision' (2017)

[36] Ottolenghi, S., "From Peeping behind the Corporate Veil to Ignoring it Completely" (1990) 53 M.L.R. 338

[37] Murray A. Pickering, 'The Company as a Separate Legal Entity' (1968) 31 Modern Law Review 481

[38] Schall A., 'The New Law of Piercing the Corporate Veil in the UK' (2016) ECFR 4

[39] Tjio, H., 'Lifting the Veil on Piercing the Veil', (2014) 19 LMCLQ

[40] Ibid

[41] Lavelle, J., 'Piercing the Corporate Veil in the UK: A Comparative Analysis of Judicial Approaches' (2018) 29(8) International Company and Commercial Law Review 310

[42] Dan Prentice, 'Piercing the Corporate Veil: UK and US Perspectives' (2016) 38(1) Company Lawyer 2, 2

[43] *J.J. McCaskill Co. v. U.S.*, 216 U.S. 504 (1910)

[44] Fuller, L. L., 'The Incorporated Individual: A Study of the One-Man Company' (1938) 51 Harvard Law Review 1373, 1402.

[45] *Re Darby, ex parte Brougham* [1911] 1 KB 95

[46] *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415, para [89], [91], [92]

[47] Day W, 'Skirting Around the Issue: The Corporate Veil after Prest v Petrodel' (2014) 2 Lloyd's Maritime and Commercial Law Quarterly 269

[48] Ottolenghi S, 'From Peeping Behind the Corporate Veil to Ignoring it Completely' (1990) 53(3) Modern Law Review 338

2. *The issue regarding the use of Trustor and Gencor*

In contrast to what Lord Sumption believed, the evasion principle might apply to both *Trustor* and *Gencor*. According to Lord Sumption, without the prior attribution of the money's receipt by the company to the controlling shareholder, the liability would not have materialized in either situation. Thus, the dummy companies' interposition did not evade a preexisting duty.[49]

But this takes a much too limited view of the cases. Both *Trustor* and *Gencor* had an existing (fiduciary) duty to refrain from carrying out illegal payments. The controllers intervened on behalf of the companies in an effort to frustrate this pre-existing obligation. They did this to conceal their own involvement. Though, however, it cannot be said here that it was done for mere concealment, but rather for the frustration of the existing obligation too, which is, for evasion. The director of ACP, Mr. Dalby, had his dummy company, Burnstead, receive an illegal commission from Gencor. The argument, albeit bold, made before Rimer J went as follows: Mr. Dalby owed a fiduciary obligation to ACP, but he was not the recipient of the payment, and his dummy company, Burnstead, which received the payment, did not owe any fiduciary duty to ACP. Thus, the payment was legal.

This explanation was weak because, according to the laws of agency, Dalby was personally responsible for the payment to the dummy company, he did in fact receive the payment and also did, in fact, breach his duty. Even so, whether the reasoning is sound or not, it demonstrates that the dummy company was not merely utilized for concealment; it also served as an attempt to frustrate the director's pre-existing fiduciary obligation. *Trustor* shares a similar view.

It is still true that piercing the veil should not have been used to solve the issues of *Trustor* or *Gencor*. However, this is true, not because they were about mere concealment; rather, because a more conventional remedy was available, notably attributing the payments to the controlling shareholders under the laws of agency because the companies did not legitimately receive the payments.[50]

3. *What about Yukong and Creasey?*

Furthermore, it is possible that the evasion principle may even cover *Yukong Line* and Creasey v Breachwood[51], which was overruled by Ord v Belhaven Pubs.[52]

In *Creasey*, the controllers of both companies formally transferred Company A's operations to Company B. This was done on purpose to evade a preexisting duty to Company A. In *Yukong Line*, the controlling shareholder, Mr. Yamvrias, transferred assets like this to frustrate an existing claim by Rendsburg against that company.

These two cases demonstrate how the evasion principle implies that piercing the corporate veil would have been justified in these two cases; implying that, save for the rule of last resort, *Creasey* came to be good law, and *Yukong* became bad law. This unsettling claim is further supported by the fact that *Yukong* was based on the grounds that neither *Gilford* nor *Jones* were involved in the piercing of the corporate veil, even though the majority of the Supreme Court held differently.[53]

Furthermore, *Creasey* and *Yukong* are not included in the precise definition provided by Lord Sumption. Lord Sumption's statement that a person who is 'under an existing legal obligation... which he consciously evades or frustrates by interposing a company under his control' alludes to Horne and Lipman who formed dummy companies to escape the constraints of their existing obligations. Yet, there is no clear distinction between 'natural' and 'legal' persons in this regard.[54] It can be seen that legal persons under existing obligations were present in both *Creasey* and *Yukong*.

But, the company bound by the existing obligation did not interpose the other company in an effort to frustrate its obligation. Instead, this was accomplished by the controlling shareholder of both companies, who was exempt from personal liability under the obligation he intended to evade. This does not fit Lord Sumption's definition. The obligated party and the 'interposer' must be similar for the evasion principle to apply. This could only have been done if the debtor companies of Creasey and Yukong had transferred the assets to a subsidiary under their control rather than a sister company.

Here it is important to note how this minor difference matters as it certainly does in company law. The creditors are not deprived if the assets are moved to a subsidiary of the debtor company because they can still seize the shares of the subsidiary. If the assets are transferred to sister companies, this is not the case.

But, this is precisely why the asset transfer to a sister company represents an even worse case of frustration of existing liability. If the evasion principle is the legal response to the abusive interposition of companies that maliciously frustrate existing liabilities, *Creasey* and *Yukong* must be treated equally. Similar cases must be addressed alike. It makes no difference whether the legal obligation that was frustrated belonged to the controlling shareholder personally or to the company that he controls.

Such conduct is indeed frequently seen as fraud, as evidenced by traditional remedies like fraudulent trading, and fraudulent conveyances. This only serves as evidence that piercing the veil will typically be barred by the rule of last resort because insolvency law has its own, established remedies against this type of fraud against creditors in place. Yet, *Prest's* evasion principle reopens the possibility of utilizing the doctrine against asset shifting.[55]

4. *VTB Capital?*

Approval of *Jones* and *Gilford* ultimately conflicts with *VTB*. Here, Lord Neuberger argued that because the parties to the contract had not agreed to it, piercing the veil could not be used to extend a contractual duty to a non-contracting party. Lord Sumption specifically reaffirmed this viewpoint in *Prest*.

As a starting point, Lord Neuberger's hesitation in *VTB* to extend the controlling shareholder's corporate liabilities is justifiable[56]. English courts have not truly accepted piercing the veil as a way to pay off corporate debts by bypassing the company and going straight to the controlling shareholders. This stands in stark contrast to jurisdictions like the US[57] or France, where it is accepted that the primary goal of veil-piercing efforts is to extend

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[49] James Pearce-Smith, 'Can the Corporate Veil Still be Pierced' (2014) <http://www.stjohnschambers.co.uk/dashboard/wp-content/uploads/2014/10/Can-the-corporate-veil-still-be-pierced.pdf > accessed 25 February 2023

[50] Cheffings, P., 'Piercing the Corporate Veil in English Law: Reflections on Prest v Petrodel Resources Ltd' (2019) Cambridge Law Journal 78(1), 117,121

[51] *Creasey v Breachwood* [1993] BCLC 480

[52] *Ord v Belhaven Pubs* [1998] 2 BCLC 447

[53] *Yukong Line v Rendsburg (The Rialto)* [1998] 1 WLR 294, 308 (per Toulson J)

[54] Thomas K Cheng, 'The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines' (2010) 30 Oxford Journal of Legal Studies 523

[55] Schall A., 'The New Law of Piercing the Corporate Veil in the UK' (2016) ECFR 4

[56] *VTB Capital plc v Nutritek International Corp* [2013] UKSC 5, [2013] 2 AC 337, [132] (per Lord Neuberger).

[57] Joanna Gray and Christopher Mallon, 'Piercing the Corporate Veil: A Comparative Analysis of the English and US Approaches' (2014) 26(6) International Company and Commercial Law Review 180, 181.

corporate obligations to the shareholders[58]. Nonetheless, the English strategy is supported by a sound policy.

However, it is important to note that the evasion principle inexorably clashes with the rule prohibiting the extension of contractual debts to non-contracting parties. Evasion cannot trigger piercing the veil if the rule is that contractual liabilities may never be attributed to non-contracting parties. According to this method, *Yukong* was correct while *Lipman* and *Gilford* were incorrect because, in all of these instances, the dummy companies were bound to contractual duties despite not being parties to the agreements that their controlling shareholders had made. Thus, if evasion triggers piercing the veil to extend the personal liabilities of the controlling shareholder to his dummy company, the same can be done the other way around and the argument made in *VTB* is erroneous.

5. Corporate Abuse principle as a whole

Many writers have asserted that the doctrine of veil piercing rests on the wider notion of corporate abuse, including Stephen M. Bainbridge, who states 'Corporate abuse may take many forms, including self-dealing, fraud, and other forms of misconduct. Veil piercing is one tool for addressing such abuses.[59]' Larry Ribstein goes so far as to state that the concept of corporate abuse 'has become the theoretical basis for the doctrine of veil piercing.[60]'

This is not surprising given the Supreme Court's approval of the fact that evasion is to be considered an example of corporate abuse. However, it is an important question whether the doctrine of veil-piercing is solely dependent on the concept of corporate abuse as a whole and whether the statements leveled against the doctrine are accurate. For the purposes of this discussion, the response to this question is in negative. Turning to the general concept of corporate abuse would be far worse than starting over from scratch; it would introduce the very general notion which exists in other jurisdictions but was never really approved in the UK. This is why the Supreme Court needs to deliberate more on this matter. Even after Lord Sumption rejected the façade/sham test and the suggested limitation to evasion was rejected, the judgment offers no guidance on this.

The far broader category of corporate abuse would not be any better than the façade/sham test. To do so would necessitate a distinction between the use and abuse of companies, which is even harder to identify than 'evasion'. It would be up to the exercise to limit the application of that concept by creating new categories of corporate abuse (e.g. fraudulent corporate schemes (*Re Darby*), and asset shifting, depending on both precedent and legal comparison.

In the end, limited liability will be threatened by a broad notion of corporate abuse that serves as a catalyst for prompting the piercing of the corporate veil. Naturally, these adverse impacts would be lessened if the rule of last resort served the purpose for which it was intended and resulted in the de facto elimination of the remedy[61]. It will be demonstrated below how this is not the case.

6. *The doubtful nature of the rule of last resort*

The piercing of the veil is a residual remedy, according to the rule of last resort. Where more conventional remedies are at hand, it may not be used. Lord Sumption clarified this by bringing up *Trustor* and *Gencor*. He asserted that it would not have been necessary in each case to lift the veil since the general laws of agency would have allowed the controlling shareholder to be held accountable for the payments made to the dummy companies. Although correct, this is merely academic. There would have been no different outcome of the case had the doctrine not even been considered, then, why could the claimant not have access to two simultaneous remedies is a legitimate question[62]. In *Prest*, the same remark holds.

The Supreme Court takes a very long and complicated path to reject veil-piercing, only to rule unanimously that trust law produces the exact outcome the claimant's spouse sought. Lord Sumption's citation of the case of *Ben Hashem* is of no real use here either. Lord Munby's employing the word 'necessity' does not constitute him dictating the nature of the doctrine being used as a 'last resort'.

Furthermore, according to this, a court "might only do so in favor of a party when all other, more traditional remedies have shown to be of no use",[63] meaning that "if it is not required to pierce the corporate veil, it is not proper to do so".[64] In that context, the rule of last resort is not practical. It unquestionably forbids lifting the veil for the purpose of legal clarity when other remedies are available. But does it also stop piercing the corporate veil when this is not the case? In its current form, the rule cannot prohibit piercing the veil to the full amount required to prevent uncertainty in the law. This does not mean, however, it is necessary for the courts to entirely disregard the matter without clarifying its scope further.

Considering the asset shifting that occurred in *Yukong*. Sections 213 and 214 of the Insolvency Act of 1986 should be the primary tools used to address such insolvency-related misconduct. Disgruntled creditors are limited to requesting the liquidator because they are unable to directly sue the asset-shifting director or shareholder. Thus, the direct claim under section 423 of the Insolvency Act of 1986 is limited. It is obvious that these provisions should not be allowed to be skipped due to piercing the veil. Nonetheless, this means that piercing the veil cannot be prohibited in cases where the claimant's more traditional remedy against the respondent will be successful. However, there may be circumstances in which the law completely forbids the granting of any remedy, traditional or unconventional.

Whether the rule applies when the more conventional remedy is available, not against the defendant, but against a third party is a follow-up question. This appears to be Lord Neuberger's understanding of the rule of last resort, indicating the apparent confusion in the understanding of the judges themselves, since there is nothing in principle to prove this is the case. As Jones could have sued Lipman for obtaining the retransfer of the land from his company to himself under the equitable standards of specific performance, in his opinion, it was not required to directly pierce the veil of Lipman's company. After that, the lawsuit against Lipman's business ought to have been dropped, and Jones ought to have simply sued Lipman individually. If this is the case, the rule of last resort is no longer purely conceptual. Its scope is much broader and might improve legal certainty. Despite the uncertainties in the aforementioned premise, it is important to remember that the corporate veil can only ever be pierced in cases of corporate abuse. The victim runs the danger of initially suing the wrong defendant, then suing the correct defendant too late, and ultimately failing entirely if veil-piercing is denied because other traditional remedies against third parties were available. The fraudster is the only one who benefits. This may justify why UK's law on

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[58] Schall A., 'The New Law of Piercing the Corporate Veil in the UK' (2016) ECFR 4

[59] Stephen M. Bainbridge, "The Case for Limited Shareholder Voting Rights," (2006) 53 UCLA L. Rev. 601, 631.

[60] Larry E. Ribstein, "The Death of Veil Piercing," (1992) 87 Nw. U. L. Rev. 281, 301.

[61] Heintzman, T.G., & Kain, B. (2013). Through the Looking Glass: Recent Developments in Piercing the Corporate Veil. B.F.L.R., 28.

[62] Kim M., 'Piercing the Corporate Veil as Last Resort' (2014) 26 SAcLJ.

[63] Ibid

[64] Ibid

veil-piercing is much more restrictive than that of Argentinas or France.

Although Lord Sumption believed that *Jones* and *Gilford* were rightly solved by piercing the veil, Lord Neuberger believes that *Gilford* might have also been solved using the principles of agency. As a result, is it really right to consider *Jones* and *Gilford* good law? Lord Neuberger made an effort to resolve this conundrum by creating a sort of 'subjective test'. In his opinion, piercing the veil was acceptable where judges believed—whether correctly or incorrectly—that they had no other option than to do so to uphold the law and prevent abuse. Yet, this runs counter to how Lord Sumption implemented the rule when he stated that the courts should have used agency law rather than piercing the corporate veil in their decisions on *Trustor* and *Gencor*. Clearly, there is much contradiction to be seen with case law, specifically, with Lord Sumption's judgment and so *Prest* seems to have brought more questions than answers to the wider concept.

7. The lack of consistency in Lord Sumption's speech

In summary, the one positive impact of Lord Sumption's discussion of the evasion principle is that it clarifies and restricts the formerly well-known idea of the company as a 'facade' or 'sham' by limiting it to only the actions of a shareholder who has control over the company and consists in evading his or her existing obligations. However, from the perspective of its creditors, it still leaves the company open to being deprived of valuable assets. Lord Sumption added some onerous requirements to the application of the evasion doctrine, as seen above, suggesting that he was aware of this threat.

The main problem with Lord Sumption's statements up to this point is the inconsistent way in which he defines the term 'abuse of corporate personality'. On the one hand, the ruling struggles to provide courts dealing with future cases with practical ways to combat corporate abuse, but on the other, it makes significant efforts to reduce it as much as is practical. It goes without saying that the potential use of the company structure in fraudulent activity is much broader and could involve activities like defrauding creditors, disobeying the law, establishing monopolies, or defending 'knavery or crime'.[65]

Therefore, it may be preferable to address them separately with specific remedies if there is no way to combine them all into one general doctrine. Even more puzzling is the apparent lack of difficulty Lord Sumption saw in applying the rule that forbids the extension of a contract to non-contracting parties even when the controller is a party to the agreement but the company is not. Given that veil piercing cannot be used to impose new obligations on non-contracting parties, this also amounts to an incursion into the company as a sophisticated and complex legal institution and renders the evasion principle illogical.

The distinction between evasion and concealment is even harder to comprehend and defend. Lord Neuberger's opinion, which contested the idea that the *Jones* and *Gilford* rulings represented evasion cases even though he acknowledged the distinction as it is, demonstrates the dubious nature of it.

Recent Case Law

In Hurstwood Properties (A) Ltd v. Rossendale[66], which was decided in May 2021, this issue arose again. This is a recent example of how the Supreme Court of the UK seemed to distance itself from the evasion principle and questioned its consistency as an English law principle. However, the Supreme Court has demonstrated its readiness to adopt nuanced strategies to ensure that abuses of the legal system are corrected, so this should not be interpreted as an encouragement to interpose companies to avoid existing liabilities.

Hurstwood Properties Ltd (HPL) was a development company that owned commercial properties. By abusing legal loopholes, HPL attempted to avoid paying business rates on vacant properties. HPL started two different schemes:

In Scheme A, a special purpose vehicle (SPV) was established (exclusively for that purpose), and it was then given a lease on one of HPL's vacant properties, making the SPV the registered owner of the property to pay business rates. The lease was then passed to the Crown as bona vacantia after the SPV was dissolved without initiating a formal liquidation process (i.e., goods without an apparent owner). The SPV was therefore exempt from paying business rates up until the local council became aware of its dissolution and advised the Crown to discharge the obligation. Thus, HPL would be spared from paying the rates. Scheme B: Almost immediately after being established, an SPV was put into members' voluntary liquidation (one of the exceptions within the legislation was that a company being liquidated is not liable for paying business rates). So that the SPV could rely on the liquidation exception provided for in the applicable law, the liquidation process would then be prolonged as much as possible.

Due to this, Rossendale Borough Council (RBC) filed a lawsuit against HPL to recover business rates that were incorrectly assessed. RBC argued that i) the lease to the SPV, even if it were a sham, was ineffective in transferring ownership of the property to the SPV within the meaning of the applicable legislation, and (ii) the separate legal personality of the SPV should be disregarded. As a result, RBC argued that in both cases, HPL, as the ultimate beneficial owner, should be held accountable for the business rates.

Using prior case law as a guide, the High Court and then the Court of Appeal both rejected RBC's claims on the grounds that they lacked any ground for bringing a claim. To the Supreme Court, RBC therefore appealed.

According to the facts, the Supreme Court agreed with RBC's argument that the lease did not effectively transfer ownership as stated in limb i) above. The Supreme Court determined that using the Ramsay principle (which is a method of interpreting a specific statute by taking into account what Parliament would have intended its meaning to be when it was enacted), Parliament could not have intended that the owner of an unoccupied property, ultimately responsible for putting the property back into use (or else be liable for business rates), would be an SPV created exclusively for the purpose of avoiding such rates and creating the SPV as a vehicle for such evasion.

The Supreme Court decided to consider and reject the piercing the corporate veil argument even though it was unnecessary because it had already ruled in RBC's favor on this issue. It concluded that there was no room for piercing the corporate veil, even if the evasion principle were coherent (which it certainly is not due to *Prest*). As the rates accumulated day by day, HPL was responsible for the rates up until the lease was awarded to the SPV; the SPV was responsible for rates due after that point.

The English courts' treatment of the evasion principle has undergone a significant change as a result of this case, which also highlights the courts' growing discomfort with lifting the corporate veil and growing skepticism regarding the evasion principle's legal coherence. The same can be said for the recent case of Barclay-Watt v Alpha Panareti Public Ltd[67] where it was asserted by the Court of Appeal that while tortfeasors should be personally liable for tort, it has to be balanced against the importance of allowing individuals to enjoy the benefits of limited liability.

The Supreme Court's decision in *Hurstwood* instead seems to indicate that English courts are willing to use other

[65] W. Fuller, 'The Incorporated Individual: A Study of the One-Man Company' (1938) 51 Harv. L. Rev. 1402

[66] *Hurstwood Properties (A) Ltd v Rossendale BC* [2021] UKSC 16.

[67] *Barclay-Watt v Alpha Panareti Public Ltd*, [2022] EWCA Civ 1169.

alternatives available to ensure that wrongdoing and abuses of the legal system can be corrected without the need to pierce the corporate veil and violate a company's separate legal personality. Is this case a restatement of the 'last resort' nature of veil piercing that Lord Sumption spoke of? Or is it the court rejecting the doctrine entirely? These questions are important in ascertaining whether or not the doctrine is headed toward a downfall. The court itself is clearly pursuing other means of reaching decisions, not even trying to cover the apparent incoherence that was left by the judgment of *Prest*. This case may be seen as a confirmation of the court's reluctance in clarifying the scope of the evasion principle, as it wants to steer clear of reopening the pandora box of criticisms caused by *Prest*. Thus, this leads to the following question:

Is the Doctrine Headed Toward A Downfall?

It can be seen that in *Prest* it was seen as a success in providing an answer as to what piercing the veil involves as there would have been more cases in the future that have successfully pierced the veil due to the case of Prest. In the case of Penny Feathers Ltd v Penny Feathers Property Co. Ltd.,[68] this was seen as a much better example of facts that gave a rise to the value of piercing the veil. This would only be if the property had been established properly and all the decision makers would agree that the company had been used to protect himself from any wrongdoing. It can be seen that in cases regards to veil piercing the defendants argue that "there is no such thing as piercing the corporate veil" and therefore the offender was able to evade liabilities since the doctrine had not been established. The approach of *Prest* and *VTB* had introduced a restrictive approach in piercing the veil which had lowered the doctrine to the last resort principle. In cases, post-Prest, R v Singh[69] , and R v Dowell[70] showed that the superior court practice restraint when disturbing the principle set in Salomon. Hence, litigants must prove that the relevant tests have been satisfied in order for the courts to obtain a judgment against the assets that had been placed intentionally out of reach. These are however exceptional cases and will remain as such. In Akzo Nobel v Competition Commission[71], it was argued that the Competition Commission attributed the activities of its subsidiaries to Akzo, and this had caused the piercing of the veil.

An alternative approach to this can be by putting the doctrine on a statutory basis so courts have something of a guide to follow rather than having conflicting views amongst them. However, this can bring up the issue of flexibility when facing complex issues. However, making a less ambiguous rule can be seen as less harmful. Additionally, another approach can be used in which the veil can be pierced by removing any limited liability concerning involuntary creditors and tort victims. It had been introduced in Chandler v Cape[72] that the basis for this approach would be imposing the liability on the parent company as it could be suggested the parent company has a duty to the subsidiary.

With academic suggestions, the decision reflects 'a progressive trend of restricting the doctrine'.[73] However, it can be seen that the approach of narrowing the doctrine by the Supreme Court does not agree with the aforementioned statement if there is a constant rebuttal then there will be no progress. It indeed feels as if the courts have not tried to find a solution that would eliminate this problem. This in turn has made this a never-ending cycle. And it may be a matter of time before a new way is introduced as it can be seen that piercing the veil is not at a downfall but merely evolving albeit at a slow pace.

However, it is to be noted that the case of Prest indicates that the veil can be pierced under exceptional circumstances. There is a foundation on which the judges approve and that is the veil is to be pierced under exceptional circumstances. This may aid in a stepping-off point for a more well-established doctrine. The judges can still apply the principle of veil piercing unknowingly if the doctrine has been given quietus. This is a decision that may be derived from another legal basis, however, the outcome will still be the same. Therefore, with any quietus given there would still be the need for there to be transparency. Till then, there will be a halt until there is a case that can successfully apply both the provisions set in *Prest*.

Conclusion

Thus, Lord Sumption struggles in *Prest* to narrow the mere façade doctrine down to a more defined standard. However, it is difficult to disagree with the claim that the façade/sham test is clearly superior in terms of clarity and certainty to the notion of the abuse of the company's separate personality. Because of all the restrictions outlined by Lord Sumption, the doctrine of piercing the veil can be regarded as useless by many writers. It does seem that the separate legal person principle can still be disregarded in cases where evasion takes place, but it is difficult to give a case where evasion occurred in a very blatant manner. The evasion principle actually primarily prevents using the piercing doctrine to hold shareholders accountable for a company obligation. Since it will be more challenging (if not impossible) to establish a new exception to the *Salomon* principle, it also indirectly eliminates the piercing of the veil doctrine from the legal context.

Discussion of the *Prest* case among various authors demonstrates that almost all cases of abuse of legal personality can be resolved by using more traditional remedies. In light of this, Lord Walker was correct when he stated that veil-piercing is 'just a label to describe the various occasions on which some rule of law produces apparent exceptions to the principle of the separate juristic personality of a body corporate'.[74] It appears that Lord Sumption intended to encourage the courts to base their decisions on more traditional remedies rather than make reference to some shaky concepts by introducing the distinction between evasion and concealment. The issue is that he did it in an inconsistent manner. Thus, Hannigan is correct to assert that as a result of the lack of clarity in Lord Sumption's opinion, judges may use more traditional tools at their disposal, such as principles found in agency, trust, and tort law.[75]

To conclude, however, looking at the aforementioned discussions it can be seen that the matter of piercing the veil can still be considered to be in its infancy. The case of *Prest* and other cases that have been mentioned have set guidelines for the judges to work on a case-to-case basis. So it can be seen that it is not the downfall of the doctrine but it is still being evolved and its application has actually been widened. This is only a matter of time until a case comes that will further help in its development to make the application of piercing the corporate veil far more easily, certainly no recent case for ten years since *Prest* has been able to do so.

This also seems preferable from only a theoretical perspective when either broadening the doctrine to

[68] *Penny Feathers Ltd v Penny Feathers Property Co. Ltd*. [2013] EWHC 3530 (Ch)

[69] *R v Singh* [2015] EWCA Crim 173

[70] *R v McDowell* [2015] EWCA Crim 173

[71] *Akzo Nobel Chemicals Ltd v Competition Commission* [2010] EWCA Civ 1275.

[72] *Chandler v Cape* [2012] EWCA Civ 525

[73] Akansha Dubey et al, 'Family Law' (2014) 3(1) 214, 21

[74] Ibid

[75] B. Hannigan, *Company law*, (Oxford 2016) 57.

embrace the various examples of 'corporate abuse' to completely abolishing it in light of its inconsistencies that were seen above. Ultimately, the latter approach is in accordance with German development, where the idea of piercing the veil was recognized widely through the initial half of the twentieth century but has now since been rejected and no instance of any true veil-piercing is now recognized.

However, it's still uncertain whether Prest's 'analysis into oblivion' in the theory of veil piercing as Pearce debated on remains accurate[76], and if the rule of last resort is deemed effective enough to prevent veil-piercing claims regardless of its uncertainties, as seen in *Hurstwood*. The Court seemed to have ended the expansion of the doctrine, it seems that more analysis is required as *Prest* still left many issues unresolved, thus, it can be concluded that the doctrine needs to be addressed for its logical inconsistencies.

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