

Piercing the Corporate Veil: A Comparative Analysis of Common and Civil Law Approaches

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Abstract

The doctrine of corporate personality established in *Salomon v Salomon & Co.* remains the cornerstone of company law, ensuring that a corporation is a distinct legal entity separate from its members. However, the rigidity of this principle often yields to equitable and public policy considerations through the judicial and statutory device of “piercing” the veil of a company. This paper undertakes a comparative analysis of veil-piercing mechanisms across countries rooted in both common-law and civil-law frameworks, specifically Nigeria, the United States, China, and Germany. It examines the theoretical foundations, judicial approaches, and statutory interventions that guide courts in disregarding corporate personality to hold individuals behind the company personally liable. The doctrinal research method was used. Reliance was placed on primary sources such as companies’ Acts in jurisdictions in focus and relevant case law. Secondary sources such as journals both online and offline were used in the research. It also employs a comparative functional approach in analysing the applicable law in the selected jurisdictions. The study finds that while common law jurisdictions adopt a largely case-driven and discretionary approach anchored on fraud, facade, and agency principles, civil law jurisdictions apply more codified and predictable standards grounded in abuse of rights and corporate misuse doctrines. By mapping these divergent yet converging trends, the paper argues that veil piercing reflects each jurisdiction’s balance between corporate autonomy and accountability. It concludes that Nigeria could benefit from a hybrid model that combines the predictability of civil law systems with the adaptability of common law equity, ensuring corporate responsibility without undermining legitimate enterprise.

Key words: Corporate Personality, Veil Piercing, Limited Liability, Comparative Company Law, Judicial Accountability

1. Introduction

The concept of a company as a separate entity from its stockholders is commonly accepted in many common law and civil law countries. In general, courts are hesitant to stray from this fundamental aspect of corporate law. Nevertheless, the concept of a separate personality is not unqualified. The courts have the authority to deviate from it in both common and civil law nations. When courts refuse to give effect to distinct personality, it is commonly said that they “pierce” or “lift” the

corporate veil. Usually, but not always, this will lead to someone else being held responsible, possibly in addition to the corporate vehicle.¹

When the distinct identity of the company is set aside or responsibility is increased, it is commonly claimed that the courts are penetrating the veil of incorporation. This enables the courts to look beyond the business entity to the individuals directing it who may subsequently be held personally liable for debts that were earlier exclusively due to the company.²

In other words, common law courts have determined that there are implicit restrictions to this separateness by interpreting corporation legislation as creating companies with distinct personality and shareholders with restricted culpability.³ These boundaries are determined by taking into account the court's interpretation of the legislative objective behind such legislation, which is to provide an organizational framework that enables business transactions in order to achieve desirable social and economic benefits.⁴

Although there are many different ways that jurisdictions manage the corporate structure, most of them share limited liability and independent legal identity. A firm's legal rights and liabilities are distinct from those of its members when it has separate legal personality. Limiting those shareholders' liability to the amount of their actual or promised investment and any potential payout is a corollary effect of liability limitation.⁵ As a result, potentially harmful behaviour may be prescribed and practiced without repercussions, and the victims of such behaviour are often left without appropriate remedy.⁶

Piercing the corporate veil, then, refers to the judicially imposed exception to the notions of separate legal personality and limited liability, whereby courts disregard the company's separateness and hold a shareholder responsible for the company's actions as if they were their own.⁷ Depending on the jurisdiction, the Court will do so in different situations.

The states that were looked at were chosen because they are all economic giants with significant investment and thriving corporate practices. The extent and justification of veil piercing concepts

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¹ Cheng-Han Tan & Others "Piercing the Corporate Veil: Historical, Theoretical and Comparative Perspectives" 16 *Berkely Bus.L.J.* 140 (2019) available online @<https://scholarship.law.berkeley.edu/bblj> last visited on 1/3/25.

² *ibid*, 151.

³ Tan Cheng-Han, *Veil Piercing: A Fresh Start*, *J. BUS. L.* 20, 29 (2015).

⁴ *First National City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, (1983).

⁵ Mikiel Collega & Simon Borg in "Piercing the Corporate Veil: Greening Companies' Governance and Shareholders Activism" 7 *IUCNAEL EJournal* available online at <https://www.iucnael.org/pdf> last visited on 12/02/25.

⁶ See *Priest v. W.R. Grace & Co No. DV-99-4*, (Mont. 11th Dist. 1999).

⁷ RB Thompson, 'Piercing the Corporate Veil: An Empirical Study', (1991) 76 *Cornell L Review* 1036

in four jurisdictions such as Nigeria, the United States, China, and Germany, representing a combination of common and civil law traditions are critically examined in this essay. It looks into how each system strikes a balance between corporate independence and accountability, as well as how statutory frameworks, legal culture, and judicial philosophy affect that equilibrium. The study attempts to shed light on reform avenues, especially in Nigeria's changing corporate governance environment, by contrasting the codified and principle-based approach of civil law nations with the flexible, equity-based reasoning of common law systems.

2. Significance of Corporate Personality and the Doctrine of Separate Legal Personality

According to Lord Templeman, the "unyielding rock" of corporations and company law is the concept of corporate personality and separate legal entity.⁸ A "veil" is placed over a firm upon its formation, according to a long-standing legal norm. When the veil is figuratively positioned, the firm is considered as a distinct legal entity from its members, the corporation is able to acquire rights and take on obligations similar to those of a legal (juristic) person. At its core, it is a creation that is dual in character, existing as both an association of its members and an individual who exists independently of them.⁹ It follows that a business can only take action through duly authorized agents.

Despite the propensity to confuse the two, limited liability an outcome of corporate personality and piercing the veil cannot be explored separately because they are complementary ideas. Thus, it can be stated that limited liability is secured by distinct legal personality.¹⁰

As mentioned earlier, the "limited liability" principle, often known as the veil of incorporation, attempts to protect members from a company's liability. Both praise and criticism have been directed towards limited liability.¹¹ It has even been claimed to have surpassed steam and electricity as the greatest modern discovery since its inception, according to one observer.¹² Similarly, it has been criticized for encouraging fraud, transferring the risk to creditors, lowering professional standards, and making fraud public.

One important consequence of incorporating is that a company's liabilities, or responsibilities, become its property. As a result, in the event of a dispute, a company's separate legal personality will be recognized, and members will normally not be held liable for corporate debts; instead, the company will be fully responsible for its obligations. The core of company law is limited liability,

⁸ See the case of *Salomon v. Salomon & Co.*

⁹ P.W. Manda "A Comparative Analysis of Piercing the Corporate Veil in English Law and South African Law" available online at <https://repository.up.ac.za> last visited on 12/2/25.

¹⁰ Paul L. Davies *Introduction to Company Law* (2002) at 5-7

¹¹ Stephen Mayson, Derek French & Christopher Ryan Mayson, *French & Ryan on Company Law* 22 ed (2005) at 151.

¹² Professor Nicholas Murray Butler (President of Columbia University) *Politics and Economics (1911) to the 143rd Banquet of the Chambers of Commerce of the State of New York* at 43-45. Cited in P. W. Manda (n5)

which makes it simple for individuals to participate in business; in other words, investors are less inclined to take on commercial risks without the certainty of limited liability.¹³ Commerce will be able to synchronize as a result, which will eventually provide money and jobs. Investors won't have to worry about creditors attacking their other assets if the business fails or is unable to pay its debts. Consequently, the investor's risk is restricted to the amount they have invested in the business.¹⁴ Because of this, members usually take advantage of all the (economic and social) benefits and protections that limited liability provides, especially with regard to personal culpability.

There is a widespread perception that limited liability flows from distinct legal personality. The fundamental concept of separate legal personality will be somewhat impacted if this viewpoint is maintained.¹⁵ One could argue that every time the curtain is broken, the principle gradually deteriorates.¹⁶ Academic groups are rather unsure about how limited liability and legal personality relate to one another.¹⁷ However, the conversation of penetrating the veil has been greatly aided by legal personality.¹⁸ Our perception of limited liability may change the scope and application of our perception of piercing the veil.

Even while corporate veil has many advantages, there are also some difficulties because it can be used to mislead creditors, avoid current commitments, get around laws, or shield criminal activity. In order to prevent the corporate device from being effectively employed for such purposes, the veil of company is lifted.¹⁹

In other words, despite its greatness, limited liability is frequently abused. Therefore, protection against limited liability is not absolute when a company is being utilized to maintain a sham or facade or to avoid legal and fiduciary obligations.²⁰ When individuals abuse the corporate veil, courts have the power to lift it, holding members accountable for the commitments and debts of the company. In essence, piercing the veil is an exception to both distinct legal identity and limited liability. It is distinct in nature and goes against the rationale for the creation and maintenance of

¹³ Cassim, Maleka Femida Cassim & Rehana Cassim et al *Contemporary Company Law* 2 ed (2012) at 3

¹⁴ Kim-Leigh Siebritz *Piercing the corporate veil: A critical analysis of section 20(9) of the Companies Act 71 of 2008* (unpublished LLM thesis, University of the Western Cape, 2016) at 14.

¹⁵ Edwin C. Mujih 'Piercing the corporate veil as a remedy of last resort after *Prest v Petrodel Resources Ltd*: inching towards abolition?' (2016) 37(2) *The Company Lawyer* 39 at 43. Cited in P. W. Manda (n5)

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Emeka Chianu *Company Law*, (Law Lords Publication, 2012) 303.

²⁰ *Gilford Motor Co Ltd v Horne* [1933] Ch 935, CA at 943

legal fiction since only compelling grounds will permit a judge to lift the veil.²¹

Penetrating the veil is fundamentally still a defence against the misuse of different legal entities.²² It is basically one of the legal responses to the potential abuse of limited liability. In other words, piercing the veil can be said to have occurred when a group of pertinent facts becomes apparent. This occurs when a corporate corporation lacks a distinct mind, will, or existence due to members controlling its funds, rules, and commercial activities.²³ The court usually requires penetrating the corporate veil in this situation.

However, the courts do not employ a single, unified approach to lift the veil.²⁴ To be honest, it has been characterized as illogical reasoning and careless statements. Because it relies on certain known categories and lacks generic checks, its implementation is usually inconsistent, rare, and unprincipled.²⁵

In fact, one of the most confusing aspects of corporation law is limited liability as a whole (and, on the other hand, piercing the veil).²⁶ Since the turn of the twentieth century (and undoubtedly in the twenty-first), courts have grappled with the issue of how to properly penetrate the veil.²⁷ It is an obscure term since it is nearly difficult to describe and reconcile the numerous situations in which the veil should be penetrated.²⁸

However, in the following situations, the court has lifted the company's veil: To ascertain the true nature of the business. In order to safeguard the business in the event of tax-related problems. When a business attempts to evade its legal responsibilities. When the controlling company's subsidiaries serve as their agents. Whenever it is discovered that fraud or improper behaviour has been committed.

3. Justifications in Piercing the Corporate Veil in Judicial Practice

²¹ *P. W. Manda (n5), 17.*

²² Eben Nel 'Two Sides of a Coin: Piercing the veil and unconscionability in trust law' (2014) 35 *Obiter* 570 at 570-571.

²³ Paul Davies (n6)

²⁴ Cassim & others (n9)

²⁵ Andrew Domanski 'Piercing of the Corporate Veil: A New Direction' (1986) 103 *SALJ* 224; Lynette C Davids 'The lingering question: Some perspective on the lifting of the corporate veil' (1994) 1 *TSAR* 155 at 155.

²⁶ *Amin Forji 'The Veil Doctrine in Company Law' 29 September 2007. Cited in P.W. Manda (n5).*

²⁷ *Mayson, French & Ryan at 153-154. (n7)*

²⁸ *P.W. Manda (n5), 19.*

Certain theories have been taken into consideration by the courts as justification for breaching the corporate veil. It is appropriate to take a quick look at these doctrines here.

3.1 Fraud or Evasion Doctrine

Here, the business has been used as a means of avoiding contractual commitments. This happens when a shareholder forms a business to avoid his obligations under a confidentiality or non-competition agreement.²⁹ Evasion would happen if the business engages in illicit activities like money laundering or tax evasion and serves as a tool to circumvent legal constraints.³⁰ It is noteworthy that the definition of fraud in corporate veil cases is significantly more expansive than in general. The behaviour in question typically falls short of common law fraud and is more correctly classified as a deception when the courts allude to fraud in these situations. The terms "fraud" and "misrepresentation" appear to relate to the same category of behaviour in the courts.

3.2 Agency Doctrine

This theory, which is sometimes referred to as the instrumentality theory in the US, focuses on how the business is actually run and what a shareholder's position entails. When a company represents its directors and shareholders as an agent or alter ego, the courts focus on the situation's actuality rather than its appearance.³¹ In essence, what is important is 'how the company conducted business and how each person was connected to it'.³²

In a typical relationship with its shareholders, a company is the principal and its directors are its agents.³³ In some situations, though, this relationship is reversed. In other words, the directors and shareholders are the principals, while the firm is the agent.³⁴ This occurs when companies, including close corporations, are rearranged like "puppets to carry out the puppet master's instructions."³⁵ To put it another way, the controlling shareholders or directors "treat the business as if it were just a tool for advancing their personal interests rather than as a distinct entity."³⁶ The

²⁹ *Gilford Motor Co Ltd v. Horne*, [1933] Ch 935. See also *Jones v. Lipman* [1962] 1 W.L.R. 832 (Ch.) at 833.

³⁰ *Marina Nominees Ltd v. F.B.I.R* (1986)2NWLR (Pt. 20)20. See also *Alade v. Alice (Nig) Ltd* (2010)19 NWLR (Pt.1226)at 116-117.

³¹ *Cassim & others* (n9)

³² *ibid.*

³³ *Farouk HI Cassim, Maleka Femida Cassim, Rehana Cassim et al The Law of Business Structures* (2012) at 61-2

³⁴ *ibid.*

³⁵ *P.W. Manda* (n5),35.

³⁶ *Cassim & others* 69.

business is then seen as the directors' and shareholders' "agent," "alter ego," or "instrumentality."³⁷ In this instance, the firm's operations are conducted in a way that makes it impossible to distinguish between the company's economic operations and the directors' and shareholders' personal concerns.³⁸

3.3 Alter Ego Doctrine

The alter ego hypothesis states that when two related corporations have such a unity of ownership and interest that they can no longer be considered separate, the subsidiary is viewed as the parent company's alter ego. Additionally, acknowledging the organizations' distinct entities must either encourage fraud or produce unfair outcomes.³⁹

According to alter ego theory, piercing the corporate veil necessitates the cooperation of three elements: first, the parent corporation or stockholders control the corporation; second, the plaintiff is subjected to fraud or fundamental unfairness; and third, the plaintiff suffers harm or damage as a result of the corporation's fraudulent or unfair act.⁴⁰

3.4 Undercapitalization Doctrine

This is a scenario in which the shareholder either failed to contribute sufficiently to the registered capital of the business or unlawfully took such capital including corporate funds and assets out of the company.

3.5 Justice

Everyone agrees that achieving justice is the primary goal of the corporate veil doctrine in the US. In *Anderson v. Abbott*,⁴¹ the Supreme Court decided that the courts would treat the transaction's content as if the corporate agency didn't exist and as the case's justice would dictate, rather than allowing themselves to be deluded or duped by mere legal formalities. In *Arnold v. Phillips*,⁴² The Fifth Circuit Court of Appeals came to the conclusion that the corporate entity must be a deception, a sham, or merely an impediment to justice in order for the corporate veil concept to be applied. In one of the most well-known corporate veil instances in US history, *Berkey v. Third Avenue*

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ Philip Orn "Piercing the Corporate Veil-a Law and Economics Analysis" available online at <https://lup.lub.lu.se> pdf accessed on 14/5/25.

⁴⁰ See *Roquel v Philippine National Bank*, G.R. No. 246270, 30 June, 2021. Cited in Atty, Euney Marie J. Mata-Perez "Piercing the veil of Corporate Fiction" available on line at www.mtfcounsel.com accessed 02/05/2025.

⁴¹ 321 U.S. 349, 363 (1943)

⁴² 117 F.2d 497, 502 (5th Cir. 1941).

Railway,⁴³ Justice Cardozo, a member of the New York Court of Appeals at the time, highlighted the need of justice as a guide in matters pertaining to corporate veils.⁴⁴

4. Comparative Analysis of Veil Piercing Mechanisms Across Jurisdictions

4.1 Common Law Jurisdiction

A. Nigeria

The concept of distinct legal personality, which was established in the *Salomon v. Salomon & Co.* case, is widely revered in Nigeria; without it, the business would lose a lot of its appeal.⁴⁵ A learned writer has described this situation as a dogmatic approach to the corporate governance philosophy.⁴⁶ In *J & J Technologies Ltd v YHQS*⁴⁷, The court decided that the registered company's independent personality is unconstrained, even when a director is the only signatory to the company's account. In *NBCI v Integrated Gas Nigeria Ltd*⁴⁸, According to the court's ruling, a business must be given the right to be recognized as having a distinct personality from the biological individuals who manage it.

The issue in Nigeria, however, is that a lot of corporate directors have taken advantage of corporate entities to boost corporate profits. Because of the powerful administrative tools at their disposal and under their control, it is challenging for the company to hold directors accountable for breach of duty. Because the entity was an artificial entity with a separate legal personality involved in business operations, involving enormous amounts of money, it turned into a Frankenstein monster that had to be subdued in order to reduce harm and commercial catastrophe to people while still being a useful tool for business ventures.⁴⁹ If dishonest persons use the so-called "corporate shield" to hurt innocent third parties, this might occur.⁵⁰

Similarly, the status of incorporation protects the company's directors from liability for the company's actions. As a result, people may use their creativity to incorporate a business, get credit, misuse or misappropriate it without paying back, believing that the company alone should be held accountable. Even worse, in many businesses, the directors are typically the controlling shareholders, which makes removal challenging and occasionally impossible. Since directors are the primary operators and a corporation is fundamentally a fund, it becomes necessary to lift the veil on them under specific conditions.⁵¹

⁴³ 155 N.E. at 61.

⁴⁴ (n32)25.

⁴⁵ Eni Eja Alobo, *Company Law and Practice in Nigeria* (Princeton & Associates Publishing Co. Ltd, 2022) 252.

⁴⁶ J. A. M. Agbonika, *Modern Nigeria Company Law* (Ababa Press Ltd, 2021) 204.

⁴⁷ [2015] 8NWLR (Pt.1460)1 at 21 paraG-E.

⁴⁸ [1999]8NWLR (Pt. 613) 119@129

⁴⁹ J. E. O. Abugu, *Principles of Corporate Law in Nigeria* (2nd Edn, Afkar Printing and Publishing Company Ltd,2023) 240.

⁵⁰ Pereowei Subai, *Company Law in Nigeria* (Dok Consult and Research LLP, 2023) 84.

⁵¹ Alobo (n 46)

*In Adeyemi v Lar and Baker (Nig) Limited*⁵², The court ruled that a company's veil of incorporation is not infallible. Therefore, if the court is supplied with significant information that establish a corporation is the product of a biological person, which he utilizes as a mask, a sham, or a device to evade recognition by equity, the courts will be ready and willing to lift the veil of incorporation to reveal the true nature of the company in order to do justice.

In Nigeria, specific situations where the veil of incorporation will be lifted have been specified by statute. Nonetheless, there are still many situations in which the court may step in to ensure justice.⁵³

Examples under legislative provisions will be examined first, followed by examples under case law.

1. Statutory Provisions

i. Reduction in Number of Members and Directors in a Company.

Section 118 of the Companies and Allied Matters Act provides ample provisions for this.⁵⁴ A company that carries on business with less than two members for more than six months, for any debts the firm accrues during that time, all of its officers and directors are held jointly and severally accountable. Two directors are required for all companies, with the exception of small ones. Every member and director who knowingly carried on the company's operations will be held personally responsible for any debts incurred during that time if there are not two and the vacancy is not filled within a month.⁵⁵

ii. Personal Liability of Directors and Officers

Section 316 of CAMA enshrines this. Additionally, it stipulates that if the company receives money for a loan or receives money or property as an advance payment for the execution of the contract with the intent to defraud and fails to apply the money or property for the purpose for which it was received, every officer or director who is in default is personally liable to the party from whom the money or property was received. The company's liability is totally disclaimed.⁵⁶ In the case of *Public Finance Securities Ltd & Anor v. Jefia*⁵⁷ A company's chairman and managing director utilized assurances and guarantees to persuade someone to deposit money with them for agreed-upon returns, but they later refused to pay, citing low production. Based on the evidence, the court

⁵² (2000) 7 NWLR (Pt.663)33.

⁵³ J. O. Orojo Company Law and Practice in Nigeria (5th Edition, LexisNexis, 2008) 88.

⁵⁴ Companies and Allied Matters Act 2020 (as amended) (hereafter CAMA)

⁵⁵ See . S. 271 (2-3) CAMA

⁵⁶ See S. 316 (1) (c)

⁵⁷ (1998) 3 NWLR (Pt. 543), 602

found that constructive fraud had taken place and that the Company and Allied Matters Act's clause applied in this particular case.⁵⁸

iii. Legal Position of Directors

Directors are required by Section 309 to behave honestly in the best interests of the firm and all of its shareholders, not just their own. Directors were given the position of trustees with regard to the company's funds, assets, and authority, and they were required to reimburse any funds that had been unjustly disbursed. When a director deals with the company's security and exercises his authority and powers, he is considered the company's agent.

iv. Reckless or fraudulent Trading

This is encapsulated in Section 672 of the CAMA. If it appears during the winding up process that any business of the company has been carried out in a reckless manner with the intent to defraud creditors, the court has the authority to hold those who was aware of and involved in the business dealings personally accountable for all of the company's debts.⁵⁹ When a director's negligence causes the firm to become insolvent, Section 673 holds them personally accountable for the debt of the business. In contrast, section 674 holds current and former directors of the firm personally accountable for the company's debt if they have improperly used or kept the company's funds or assets. In *Mezu v. CCB (Nig) Ltd*⁶⁰ the S.C. determined that Mezu International Ltd. and the appellant were one and the same, Mezu was creating and carrying out the business's transactions while disguising itself as a limited liability corporation, distinct from the company's executives and promoters. The court additionally determined that the circumstances were similar to those that Lord Justice Russell in *Jones v Lipman*⁶¹ characterized as a farce and a gadget, a mask he holds in front of his face in an effort to evade detection by equity.

v. Directors' Personal liability for Failure to make Refunds to the Company

Section 293(6) of the CAMA requires directors to personally reimburse the corporation for any unearned compensation. Unearned compensation is money received by the directors that was not permitted by the company's articles of association, the board of directors, or the shareholders.

vi. Obligation of Disclosure by Substantial shareholder in Public Company

A large shareholder is required by Section 120 to notify the firm of their ownership (5% of unrestricted voting rights) within 14 days of becoming aware of it. The corporation must notify the Commission of this fact within 14 days of receiving the notice. If the corporation or the holder fails, the Commission may penalize them.⁶²

⁵⁸ Section 290 of CAMA 1990

⁵⁹ *See Re Todd Ltd (1990) BCLC, 454.*

⁶⁰ [2013]3NWLR (Pt. 1340)188

⁶¹ [1962]1 WLR 832

⁶² *See section 120 (6) CAMA.*

vii. Failure to Comply with Established Business Ethics as Regard the Publication of the Business Name by the Company

According to Section 729(3), if an officer of the company or someone acting on his behalf uses the company's seal, business letters, bill of exchange, promissory note, parcel, invoices, or letter of credit without authorization, if the business does not pay the holder of any such bill of exchange, promissory note, check, or order for money or commodities, they will be held personally accountable for the whole amount.⁶³

viii. Investigation into Affairs of Related entities

An investigator is authorized by Section 778 of CAMA to explore beyond the firm they are examining and check into other businesses, such as holding companies or subsidiaries connected to the company they are investigating. For the purpose of preparing and presenting group financial statements, the distinct personalities of each of the participating companies are ignored, and they are all treated as a single organization.⁶⁴

ix. Personal Liability of Promoters for Pre-incorporation Contracts

An unincorporated firm's promoter is personally responsible for any debts incurred before the company was incorporated. Unless the contract is approved by the company during incorporation, a director is individually liable for any contract they sign on behalf of an unincorporated business.⁶⁵

x. Donation of Gift by Companies

Regardless of whether the company directly or indirectly donates any of its property or funds to a political party or political purpose, any member who voted in favor of the donation or gift, as well as the officers in default, are jointly and severally accountable to reimburse the firm for the donation's worth.⁶⁶

2. Judicial lifting of the Veil of Incorporation

In *Little Wood Stores v. IRC*⁶⁷, Lord Denning assailed the veil of incorporation thus:

The Salomon decision needs to be closely monitored. It has frequently been believed to conceal a limited company's personality from the courts. However, that is untrue. The curtain can be lifted by the courts, and they frequently do. They are able to remove the mask, and frequently do. They search for what is actually behind. With group accounts and other measures, the legislature has set an example. The courts ought to do the same.

⁶³ See *Adeniji v. The State* (1992)4NWLR 248.

⁶⁴ See section 380 (2) CAMA.

⁶⁵ See section 96 (2) CAMA.

⁶⁶ See section 43 (2) CAMA.

⁶⁷ (1969) 1 WLR1241

When it comes to matters involving breaching the corporate veil, Nigerian courts appear to have adopted the English law lord's aforementioned statement. Thus, in the case of *Adeniji v The State*⁶⁸ the Court of Appeal observed that “The court will always use its power to pierce the corporate veil if it is necessary to achieve justice, regardless of the legal feasibility of the concept of the corporate situation under debate.” It follows that the Nigerian court will raise the veil when the time is right. It is understandable that in the case of *International Offshore Construction Ltd and Ors v. Shoreline Liftboats Nigeria Ltd.*⁶⁹, When the court determined that the fourth appellant was utilizing multiple businesses in dealings with the respondent in order to escape liability in those transactions, the court did not hesitate to lift the corporate veil.

If there is deception by an owner or promoter attempting to use a corporate structure to avoid fiduciary or legal obligations, the court may also use its judicial authorities to pierce the veil of a corporation. In *Marina Nominees Ltd v. FBIR*⁷⁰, According to the SC, a registered firm cannot be considered an agent of its subscribers. Despite the fact that all of the appellants' workers were employed by the accounting firm, Peat Marwick, it refused to lift the veil to hold the appellant as its agent.

The court may also pierce the veil of incorporation if a crime is committed, or if the corporate veil is misused or abused in a transaction. In certain situations, the directors will be held directly liable for any obligations arising from the transactions. In *Oyebanji v. The State*⁷¹ The Supreme Court ruled that the veil can be lifted in criminal cases by exercising its equitable power to hold the offender accountable. The aforementioned ruling appears to have overturned the Court of Appeal's decision in *Adeniji v The State* that when a crime is committed, the company's veil cannot be lifted by the court using its equitable power to hold the perpetrators accountable.

The corporation's veil may be lifted if the court determines that the firm was established to further individual and collective interests at the expense of the shareholders. In *Nigerite Ltd v Dalami (Nig) Ltd*⁷², It was decided that even if a properly registered company cannot be disregarded as a scam, it can be proven by proof that it operates solely on behalf of the people who called it into being rather than acting as an independent trading unit.

A director may be held personally liable if he signs a contract in his own name without disclosing the name of the company or indicating that he is acting on its behalf. In *Ataguba & Co v Gura Ltd*⁷³, the appellant, who sold the respondent a truck, collected the purchase amount, and issued a receipt in his own name, was found to be the true contracting party.

⁶⁸ (1992) 4 NWLR (pt.234) 248@262.

⁶⁹ (2003)16 NWLR (Pt. 845) 180

⁷⁰ See Adeyemi v. LAN and Baker Nig Ltd. (2000) 7NWLR (pt.663)

⁷¹ (2015) 14 NWLR (Pt.1479) 270.

⁷² (1992)7NWLR (Pt. 252)288

⁷³(2005)8NWLR (Pt.927) 429,

When a director's carelessness or indiscretion in a transaction led to the company's debt, he may be held personally accountable.⁷⁴ However, if it can be demonstrated that the director was only doing his statutory obligations, responsibility may be excluded. All the components required to demonstrate negligence must be present in order to prove the aforementioned negligence.⁷⁵

In addition to circumstances where statutes permit the disregard of the company's legal personality, the aforementioned examples of when the veil may be lifted in both civil and criminal cases show that the court will, in appropriate circumstances, especially in the interest of justice, also disregard the legal personality and treat the company as the members' alias, agent, trustee, or nominee.

B. United States

When it comes to veil piercing, the US seems to be more liberal, possibly with the exception of China. Although courts often declare that the corporate structure will be discarded sparingly or unnaturally, the processes in the United States appear to investigate a wider range of concerns than other common law courts.

This could be explained by the United States' more obviously policy-based approach. Thus, in *Wm. Passalacqua Builders, Inc v. Resnick Developers South, Inc*,⁷⁶ the court stated that the question was whether "the policy behind the presumption of corporate independence and limited shareholder liability is subordinated to the principle that justifies disregarding the corporate structure." Therefore, compared to many other common law countries that employ the caveat emptor doctrine, US courts seem to place more emphasis on the protection of third persons dealing with the corporation.

Despite the fact that US corporation law is primarily based on state law, nearly all US state jurisdictions follow one of the two traditional formulations of veil piercing jurisprudence. These are the "alter ego" and "instrumentality" doctrines.⁷⁷

The notion of instrumentality was described in *Lowendahl v. Baltimore & O. R. Co.*⁷⁸ First, it calls for more than just corporate entity control. "total control over all aspects of the transaction under attack, including finances, policy, and business practices, to the point where the corporate organization in question lacked a distinct mind, will, or existence at the time." Secondly, it must have been utilized by the defendant "to carry out a dishonest and unfair act that violates the plaintiff's legal rights, to commit fraud or injustice, or to violate a statutory or other positive legal duty." Lastly, the injury or loss complained of must have resulted from the control and responsibility violation.

⁷⁴ See *Iyere v. BFFM Ltd.* (2008)18NWLR (Pt. 1119) 300 at 351G-352E

⁷⁵ See *Anya v Imo Concorde Hotels Ltd* (2002)18NWLR (Pt.799)377.

⁷⁶ 933 F.2d 131, 138 (2d Cir. 1991)

⁷⁷ Phillip I. Blumberg, *Accountability of Multinational Corporations: The Barriers Presented by Concepts of the Corporate Juridical Entity*, 24 *HASTINGS INT'L & COMP. L. REV.* 297, 301 (2001)

⁷⁸ 287 N.Y.S. 62, 76 (N.Y. App. Div.), *aff'd* 6 N.E.2d 56 (N.Y. 1936).

The alter ego doctrine was stated by court In *RRX Indus, Inc. v. Lab-Con, Inc.*,⁷⁹ to applies where “(1) The corporation's and the individual's personality are so similar that they are no longer separate entities, and (2) treating the acts as the corporation's alone will lead to an unfair outcome.” Even though these appear to be different examinations, it is difficult to set them apart because they both require some kind of misbehaviour caused by the control of one or more individuals, to the extent that it hindered the corporation's ability to function as an independent entity. The entity was set up for false or unlawful objectives, and the dominance was utilized to sustain a corporate fiction.⁸⁰

Indeed, in *Wm. Passalacqua Builders, Inc v. Resnick Developers South, Inc*, the court believed that the theories of instrumentality and alter ego “should be regarded as interchangeable as they are indistinguishable and do not produce different outcomes.”⁸¹

In addition to the notions of "instrumentality" and "alter ego," "agency" is occasionally mentioned⁸² and this result when a person “control the company in order to advance his personal business instead of the company's.” Consequently, the company was reduced to a "shell" or "dummy.”⁸³ Although this category is sometimes mistaken with the two earlier concepts, it seems to be distinct from them, therefore the existence of wrongdoing does not seem to matter when piercing happens in these circumstances. The "identity" idea, which has been called "such a vague and largely pointless strategy that it doesn't merit in-depth explanation," is likely the best way to characterize it.⁸⁴ In addition to agency, in which a company is only a "dummy" or "shell," this could involve circumstances like the concealing principle, which has been recognized in the UK, where an individual rather than a company is the true party to a transaction. In contrast, some courts in the United States simply ask if the company is a tool, front, or personal instrumentality, or if it is just a conduit for the parent or shareholder.⁸⁵

⁷⁹ 772 F.2d 543, 545 (9th Cir. 1985

⁸⁰ *Sabine Towing & Transportation Co, Inc v. Merit Ventures, Inc*, 575 F.Supp. 1442, 1446 (E.D.Tex. 1983).

⁸¹ *Cheng-Han Tan & Others (n1)*, 161.

⁸² *Walkovszky v. Carlton*, 223 N.E.2d 6, 7–8 (N.Y. 1966).

⁸³ See *Wm. Passalacqua Builders Case (supra)* at 138.

⁸⁴ *Blumberg (n50)* 122.

⁸⁵ *Harris v. Wagshal*, 343 A.2d 283, 287; *International Union v. Cardwell Manufacturing Co, Inc.*, 416 F.Supp 1267, 1286

The question of domination and control lies at the heart of veil piercing in the United States. It is hard to imagine a judge finding that veil piercing has not taken place when a corporation has been used to achieve an oppressive objective. The courts have devised a list of components that would normally show that the defendant was a dominated corporation, including:

- i. the lack of the customs and procedures that are essential to a company's existence, such as issuing shares, choosing directors, maintaining corporate documents, and so forth.
- ii. inadequate capitalization,
- iii. whether money is transferred into and out of the company for private rather than business uses.
- iv. overlap in directors, officers, employees, and ownership.
- v. corporate entities' shared office space, address, and phone numbers.
- vi. the extent of the purportedly dominant corporation's commercial discretion.
- vii. whether the dominating corporation is treated at arms' length by the associated corporations.
- viii. whether the corporations are recognized as independent profit centres.
- viii. the group's corporations' payment or guarantee of the controlled corporation's debts, and
- x. whether the aforementioned corporation possessed assets that were utilized by other corporations as though they were its own.⁸⁶

Due to the inability to adequately differentiate the company's operations from those of its parent or owner, the courts have broken through the corporate veil. In *Gorill v. Icelandair/Flugleider*,⁸⁷ The corporate veil was breached using "instrumentality" theory. The court found signs of control and domination.

Parker v. Bell Asbestos Mines, Ltd gives another example that demonstrates a more comprehensive awareness of misconduct in the United States.⁸⁸ The question was whether a parent company's subsidiary could shield it from tort liability for damage caused by asbestos. Similar action occurred in England, when the court ruled in the parent's favour because it thought incorporation limited

⁸⁶ *Wm. Passalacqua Builders Case*, (*supra*)

⁸⁷ 761 F.2d 847, 853 (2d Cir. 1985).

⁸⁸ 607 F. Supp. 1397 (E.D. Pa. 1985).

future responsibility.⁸⁹ In *Parker v Bell Asbestos Mines, Ltd*, The court reached a different conclusion from that in England, determining that it is an abuse of privilege to utilize legal tactics to enhance liability restrictions to the point of near invulnerability to responsibility for harm to the public, which must surely fail in an equitable weighing of conflicting public policy reasons.

It is important to note that parent-subsidary connections were a common feature of the US cases mentioned above.⁹⁰ This could explain why veil piercing is seen more liberally in the United States.

In general, the collection of veil piercing cases⁹¹ is a little unclear in the United States. It is hard to disagree with Miller's observation that:

Due to the diversity of judicial methods, the use of general vocabulary, and the sheer volume of court rulings, veil-piercing jurisprudence in the US lacks the degree of confidence and predictability that contemporary industry expects. For the business planner, the veil-piercing common law of contracts and torts is still very challenging and very discretionary.

2. Civil Law Jurisdiction

A. China

A particular legal provision in China offers an exemption to limited liability and separate personality. Before the 2005 Company Law, Chinese law did not formally acknowledge veil piercing. However, prior to its adoption in 2005, the Chinese judiciary treated the idea cautiously even in the absence of a clear statutory basis.

Article 20 of the 2005 Company Law,⁹² gave a broad principle that a company's shareholders should not abuse their rights, the company's legal person status, or its limited liability as stated in the third paragraph which stipulates that:

⁸⁹ *Adams v. Cape Industries Plc* [1990] 2 WLR 657; [1990] Ch. 433 (A.C.) at 544. wherein the English Court of Appeal ruled that employing a corporate structure to restrict future liability is a vital part as governed by English company law and effectively ruled out veil piercing in tort proceedings. After *Adams*, veil-piercing plaintiffs have not had an entirely bleak future. Two years later the case of *Creasey v. Breachwood Motors Ltd.* [1992] B.C.C. 638 (Q.B.) at 647–48 broke through the barrier. The case involved two companies whose assets were reallocated between jointly owned entities to preempt the consequences of an anticipated verdict. Following a five-year interval, the Admiralty Court explicitly endorsed the reasoning in *Creasey* and prohibited the sale of a vessel by one member of a business group to another in a case with nearly identical facts - *The 'Tjaskemolen' (Now Named 'Visvliet')*, [1997] 2 Lloyd's Rep. 465 (Q.B.) at 470–71. Regrettably, *Creasey* was later overturned in *Ord & Anor v. Belhaven Pubs* [1998] B.C.C. 607 (A.C.) at 616.

⁹⁰ *Mangan v. Terminal Transportation System, Inc.*, 247 A.D. 853 (1936).

⁹¹ Sandra K. Miller, *Piercing the Corporate Veil among Affiliated Companies in the European Community and in the US: A Comparative Piercing Approaches Analysis of US, German and U.K. Veil Piercing Approaches*, 36 AM. BUS. L.J. 73, 94 (1998).

⁹² Revised in 2013.

Any shareholder who misuses the company's limited liability and independent legal person status to avoid paying the company's debts, thereby seriously harming the interests of the company's creditors, will be held jointly liable for the company's debts.⁹³

A four-pronged legal test, or a standard with four components, is established by Article 20 for judicial implementation of the theory. First, it must be demonstrated that the shareholder in question has misused both the shareholder's restricted liability and the company's legal person status. Second, the aforementioned misconduct must be meant to "evade" making payments to the company's creditors. Third, there must be "serious" harm to the creditors' interests.

Fourth, there must be a direct connection between the creditors' losses and the abusive actions of the shareholder.⁹⁴

Since the new Company Law took effect in 2006, hundreds of veil-piercing cases have been decided by Chinese courts. This suggests that Chinese courts have been keen to lift the corporate veil, or at least, "Chinese judges are clearly significantly more likely to pierce a company's veil and shift liabilities to its owners based on statutory authority than their common law counterparts who depend on judicial principles."⁹⁵ Due to their readiness to penetrate corporate veils, Chinese courts are regarded to be engaging in "judicial activism" in veil-piercing cases.⁹⁶

Although a broad principle is outlined in Article 20 of the Company Law, academic literature has proposed the following situations that could result in enough abuse to justify veil piercing.⁹⁷

The first is under capitalization, which is caused by shareholders' insufficient contributions to the company's capital or their unlawful withdrawals from its capital (cash or assets). The second is when the business has been utilized as a means of avoiding contractual duties. A third scenario occurs when the business is used to get around legal restrictions and engages in illicit activities like money laundering or tax evasion. Lastly, in cases where there has been a lack of formality or uncertainty that could lead to the company's and the shareholder's affairs being mixed up. In some cases, the shareholder creates an alter ego by ignoring the company's separate legal personality.

⁹³ Hui Huang, *Piercing the Corporate Veil in China: Where Is It Now and Where Is It Heading?*, 60 *AM. J. COMP. L.* 743, 744 (2012)

⁹⁴ See XI Xiaoming and Jin Jianfeng *Corporate Litigation: Theories and Practices* (People's Court Press, 2008) 562-564.

⁹⁵ *ibid.*

⁹⁶ Colin Hawes et al, "Lifting the Corporate Veil in China: Statutory Vagueness, Shareholder Ignorance and Case Precedents in a Civil Law System," 15 *J. CORP. L. STUD.* 341 (2015)

⁹⁷ See Xi and Jin (n95) Huang (n94)

Despite the foregoing, Xi and Jin⁹⁸ have revealed two former China Superior People's Court (SPC) justices issuing warnings that:

In order to preserve the concepts of autonomous legal identity and limited liability of contemporary corporate law, the penetrating corporate veil rule must be applied cautiously whenever a situation can be resolved by the standard civil law norms. Instead of becoming a common legal strategy, the veil piercing doctrine should only be applied as a last resort.

None of the four recommended strategies appear to have a cascading effect on the others when applied by the courts. The court would decide which of the options to use based on the facts of the case. However, it appears that the majority of incidents where veil piercing has taken place are related to commingling.⁹⁹ The main idea behind commingling is that the company's assets and those of its shareholders cannot be distinguished from one another. For this reason, they should be regarded as one and the same. The asset commingling approach's application in court is exemplified by the case of *Wuhan Vegetables Co. v. Wuan Jiutian Trade Development Co.*¹⁰⁰ wherein Tianjiu Co. received the plaintiff's ownership stake in Baishazhou LLC. The complainant was never compensated in full by Tianjiu for this transfer. Later, Tianjiu gave Mrs. Wang Xiuqun a portion of this ownership holding, giving her a 70% stake in Baishazhou. After that, there were two more transfers. Mrs. Wang first gave China Velocity Group Limited her equity stake in Baishazhou, and then she gave Huang Yi and Tao Xin her 96% equity stake in Tianjiu. The corporate veil against Mrs. Wang was permitted to be lifted by the court. Based on the aforementioned actions of the majority shareholder, who had total control over Tianjiu, and the lack of evidence that the plaintiff was duly compensated for the transfer of its equity interest, the court concluded that Mrs. Wang had effectively "escaped" from Tianjiu by transferring her equity ownership to others. The court determined that she had adversely impacted the plaintiff's ability to realize her debt claims as Tianjiu's creditor. According to Article 20(3) of the Company Law, Mrs. Wang was therefore jointly accountable for Tianjiu's indebtedness. This case can be seen as an example of a shareholder deceiving creditors by abusing the corporate structure. Another theory is that Mrs. Wang, the defendant, stole the company's assets from the plaintiff. Veil piercing was justified since this one instance of misappropriation was seen to be proof of asset commingling.

*In the case of Yueyang Shenyu Grease Trading Ltd. v Lin and Others*¹⁰¹ the Yueyang Municipality Intermediate Court's ruling. Mr. Liu and Mr. Hu were the defendant company's two stockholders

⁹⁸ (n94)560.

⁹⁹ Ibid 748.

¹⁰⁰ (2009) Wu Min Shang Chu Zi No. 66, Wuhan Interim. People's Ct., December 25, 2009.

¹⁰¹ (2010) Yue Zhong Min San Zhong Zi Di 276 Hao, Yueyang Interme. People's Court, September 30, 2011.

in this instance. Mr. Peng was appointed finance manager and Mr. Xu was appointed CEO. Orally, it was decided that Messrs. Liu, Xu, and Peng would own 40%, 40%, and 20% of the company's shares, correspondingly. Despite this arrangement, Messrs. Liu, Xu, and Peng were recognized by the firm as the real shareholders and controllers, but Mr. Liu and Mr. Hu continued to be the only stockholders listed. The complainant paid the business several times for cotton purchases. The finance manager put these sums into his personal bank account to lower the company's income for tax purposes. When the cotton they purchased was not delivered, the plaintiff filed a lawsuit against the company due to its inadequate assets, naming its stockholders as defendants.

In the first case, the court found that by combining corporate and personal assets, the three shareholders Messrs. Liu, Xu, and Peng who were regarded as actual shareholders had broken the company's independent legal personality. They were consequently both held responsible for the company's debts. In contrast, Mr. Hu was not responsible. The first instance ruling was modified by the appeal court. In his function as the legal agent and registered shareholder, it was found that Mr. Liu had actually violated the company's separate personality and harmed creditors' rights. Lifting the corporate veil in his case was therefore acceptable. As a shareholder, Mr. Hu was also liable for the company's debts. However, since the finance manager was not a shareholder, veil piercing did not apply. Since Mr. Xu had accepted the first instance ruling, the court did not take his case into consideration.

The case of *China Orient Asset Management Co Ltd v. The Xi'an High-Tech Area Branch of China Construction Bank*¹⁰² may shed light on how to address the undercapitalization issue. In this instance, Jinling Company received a loan from China Construction Bank. But Jinling didn't pay back the China Construction Bank. China Orient Asset Management Co. Ltd. (COAMC), the plaintiff, eventually received the debt from the bank. Due to four of the owners' fraudulent capital contributions and one shareholder's RMB2 million withdrawal from Jinling, COAMC filed a lawsuit against a number of Jinling shareholders, requesting that they be held jointly accountable for the debt. The plaintiff's complaint was initially upheld by the Xi'an Intermediate People's Court. The Shan'xi Higher People's Court, the appeal court in this instance, disagreed with this line of reasoning. The application of the veil piercing theory was deemed incorrect by the appeal court. In the end, the appellate court ordered the shareholders to reimburse the plaintiff for the same amounts, despite the fact that it was founded on a different legal theory known as complimentary liability.

B. Germany

In Germany, veil piercings by judges are uncommon.¹⁰³ Courts limit damaged creditors' direct claims against stockholders to circumstances where assets have been mixed. The guidelines set

¹⁰² 2010)Shan Min Zai Zi Di 00013 Hao,Shaan'xi Higher People's Ct. Apr. 7, 2011

¹⁰³ See *COMPARATIVE COMPANY LAW – A CASE-BASED APPROACH* 219 (Mathias Siems & David Cabrelli eds. 2nd ed. 2018).

down and implemented by German courts have recently evolved in all other cases.¹⁰⁴ Shareholders may be held liable for tort rather than veil piercing if they deplete a corporation of its assets at the expense of creditors. Because stockholders are answerable to the company rather than its creditors, the latter's losses are reflective in nature, courts avoid veil-piercing.¹⁰⁵

Furthermore, stockholders are never held personally responsible for instances of undercapitalization or misuse of the corporation form; additionally, a company's dominant influence does not constitute a basis for such accountability on its own. Previous decisions that used corporate group principles in cases where shareholders controlled a group company to its detriment are no longer applicable.¹⁰⁶ They are now included in newly created criteria that apply when stockholders endanger the company's existence. For the courts to be motivated to lift the company's veil, the shareholders' actions must be close to what is known as "annihilating interference."

German courts acknowledged in the 1920s that shareholders may be held personally accountable when their actions caused businesses to go bankrupt. Courts tended to view dominant shareholders in GmbHs (Private Limited Liability Companies) that went bankrupt and failed to pay creditors negatively between the 1980s and the early 2000s. Over time, the conditions for this kind of personal culpability have changed. These characteristics encouraged disgruntled creditors to demand that stockholders be held personally liable for the company's debts, citing inadequate capitalization. However, this hope has been dashed by a recent ruling by the German Supreme Court. In its 2007 *Trihotel* judgment,¹⁰⁷ the Supreme Court (BGH) affirmed earlier decisions and decided that owners might be held personally liable for misconduct if they mismanaged assets intended to be set aside preferentially for creditors, which ultimately led to or made the company's insolvency worse. But the court tightened the conditions for this kind of responsibility. It particularly overturned earlier decisions that had established a subtype of veil-piercing based on the exploitation of the corporate structure as an exception to the idea of limited liability rather than torts. However, the Supreme Court stated in its decision in the *Trihotel* case that it considered its earlier decisions to be problematic from a doctrinal perspective since they had led to shareholders being held personally liable to creditors even though no obligations due to creditors had been violated. The corporation only suffered losses as a result of the duties that were violated. The Supreme Court deemed it incorrect to assume that creditors were instantly impacted by any loss of company assets.¹⁰⁸ Rather, the losses were solely reflecting in nature, and creditors typically had no recourse for reflection losses. The Court emphasized that because veil-piercing could undermine the limited liability principle, it must be employed carefully. It was obviously worried that supporting widely defined categories of veil piercing would lead to a system that judges may apply too carelessly.

¹⁰⁴ *Cheng-Han Tan & Others (n1)*, 170.

¹⁰⁵ *ibid.*

¹⁰⁶ GÜNTER H. ROTH & PETER KINDLER, *THE SPIRIT OF CORPORATE LAW— CORE PRINCIPLES OF CORPORATE LAW IN CONTINENTAL EUROPE* 68 (2013).

¹⁰⁷ BGH *Trihotel*, 2007 NJW 2689

¹⁰⁸ (*supra*) 23.

In instances of "annihilating interference," stockholders were still held personally accountable, but this was no longer determined by the same factors. The Court determined that "annihilating interference" would now be considered tortious liability for illegally and selfishly tampering with company's property. For the benefit of creditors, these corporate assets are subject to strict capital maintenance laws. When tampering with these assets leads to or exacerbates corporate insolvencies, tortious liability ensues.¹⁰⁹ Damages are payable to the company alone, not to its creditors, because the company's losses are only reflective.

Soon after, the Supreme Court upheld these novel ideas in its GAMMA decision. A state court of appeals' decision to hold the shareholders of a GmbH (private limited liability company) personally accountable for using the business as a "Cinderella company" anticipated the Supreme Court's decision.¹¹⁰ The Supreme Court reversed the appellate court's decision and upheld its earlier decision in Trihotel, which found that stockholders cannot be held directly accountable to creditors for activities that jeopardize the company's survival. It continued by elaborating on more aspects. It emphasized that instances of basic undercapitalization in a material sense that is, circumstances when capital maintenance rules are not violated do not meet the requirements for a "annihilating interference."

In this instance, the court decided that the shareholders' annihilating involvement could not be justified by their incapacity to provide the company with enough support to enable it to pay off its debt. The corporation was officially fully funded as required by law, and the stockholders did nothing to prevent the creditors from having legal access to all of the company's assets while it was a going concern.

Therefore, there may be a direct claim against stockholders, but only in cases where the company's creditors were directly harmed by a tort. Because it does not conflict with Trihotel's finding that creditors cannot claim merely reflective wrongs and damages, this GAMMA ruling is consistent with the latter. Since then, several rulings have validated Trihotel and GAMMA's position.¹¹¹ When shareholders mixed private and corporate assets, German courts have the authority to lift the veil. The only situation in which German courts still apply veil-piercing principles to make shareholders directly liable to a company's creditors is commingling.

This type of corporate veil-piercing has been consistently upheld by the Supreme Court, which has also contributed to its development. The Supreme Court established the conditions for personal liability stemming from the mixing of personal and business assets in a 2005 decision that disregarded capital maintenance rules. The verdict states that payments made to third parties, the firm, and its shareholder or shareholders must be so opaque that it is impossible to identify them as belonging to the company. Consequently, it becomes impossible to identify the company assets from the personal holdings of the shareholders.¹¹²

¹⁰⁹ (*supra*) 28.

¹¹⁰ (GAMMA), 2008 NJW 2437

¹¹¹ Sanitary, 2009 NZG 545.

¹¹² BGH II ZR 178/03, Nov. 14, 2005, 2006 NZG 350

Despite the notion that civil law judges do not make law, veil-piercing is a judge-made legal rule in these mixed situations that fills a gap left by statutory law. Its conceptual basis is the implementation of section 128 of the Business Code (Handelsgesetzbuch), which imposes personal liability on all general partners in commercial partnerships, and the abuse of the corporate structure, which leads in the loss of the limited liability privilege. The extreme situation when corporate assets are indistinguishable from shareholders' personal assets justifies the terrible consequence that the shareholders responsible for commingling are directly and personally liable to the company's creditors.¹¹³

Attempts to break through the corporate curtain are increasingly met with hostility in Germany. The Supreme Court's shift in opinion in the "annihilating interference" cases suggests that it may be heading in that way, as many observers contend that the idea should be completely abandoned.¹¹⁴

1. Conclusion

The comparative investigation of corporate personality and its constraints exposes veil-piercing doctrines' contextual variation as well as their universality. The way that different governments balance limited liability and accountability differs greatly, even though they all stem from the same aim to stop corporate wrongdoing. By the US's adoption of pragmatic and policy-driven approach, judges are able to more easily remove the veil when justice and fairness demand it. Nigeria's approach to veil piercing, on the other hand, is still mostly based on English law, although it is less theoretically sophisticated, has uneven applicability, and depends less on statutory authority.

There is more doctrinal coherence in civil law systems, especially in China and Germany. China's codification under the Company Law establishes precise statutory requirements for shareholder accountability if corporate wrongdoing occurs, demonstrating a state-driven commitment to market order and creditor protection. Germany's approach contains a fundamental restriction of liability, highlighting the abuse of legal form rather than judicial discretion.

The necessity for balanced reform in Nigeria and other common law jurisdictions is highlighted by all of these comparative findings. Predictability and deterrence would be enhanced by codifying specific veil-piercing reasons, such as fraud, undercapitalization, and abuse of distinct personality. In the end, the corporate veil shouldn't be a weak barrier that may be easily breached or an unbreakable barrier for misconduct. It must continue to be a disciplined legal instrument that upholds the integrity of corporate personality while serving justice.

¹¹³ (n1) 182

¹¹⁴ Lord Neuberger of the UK Supreme Court was sympathetic to such a view, see *Prest* [2013] 3 WLR 1 [79].