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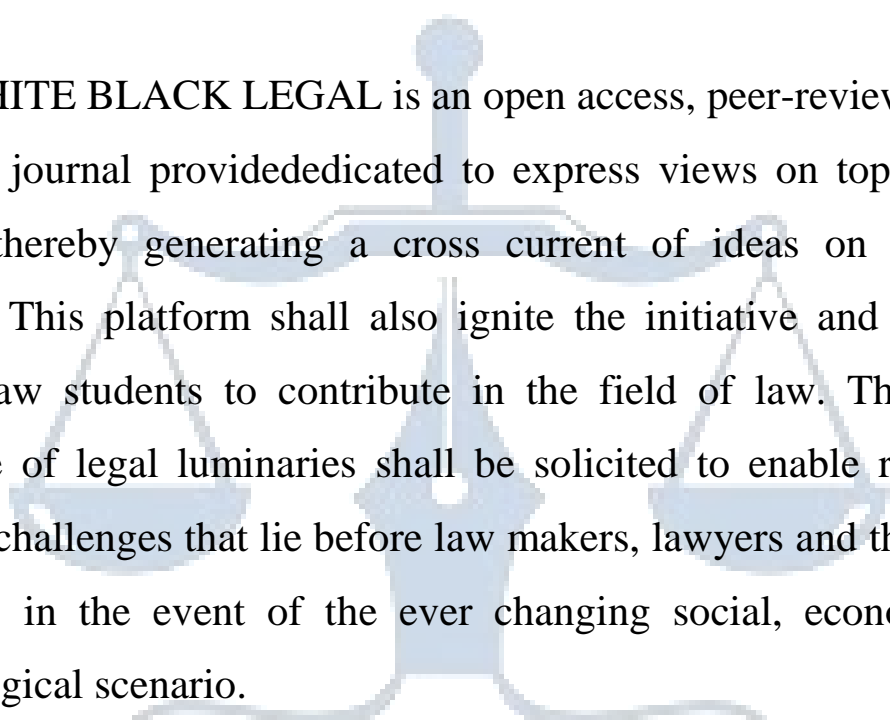


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

Lifting Of The Corporate Veil

Authored By - Gauri Goyal
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Introduction

A company has no specific definition, however section 2 (20) of the Companies Act,2013 makes an effort to define the term in the context of the act's provisions and for its intended use. It states: "company" means 'a company incorporated under this Act or under any previous company law'¹. To be an incorporated association, the company must be registered with the Companies Act. Without registration, it becomes an illegal association. The business sector has experienced several frauds, instances of insider trading, and false statements as a result of the rising economic expansion and changes within the corporate world. The lifting of the corporate veil was created in order to shield the members from company practices.

Meaning: Company as a separate legal entity

A "legal entity" is one that is recognised by law as a distinct legal entity, separate from persons who manage, own, or control the entity. The entity has its own legal rights and duties². A firm, limited liability partnership, or any other entity recognised by the law as having its own distinct legal existence could qualify as a separate juristic person. An "incorporated" entity, like a business, is a distinct legal entity.

Meaning: Corporate Veil

It occasionally happens that frauds and other improper or unlawful conduct are carried out using the corporate identity of the organisation. Since an artificial person cannot commit a crime or commit fraud, it may be necessary to strip away the corporate identity in order to find the true offenders³. This is referred to as "lifting the corporate veil."

This legal concept divides corporate behaviour from shareholder behaviour. It protects the stockholders from being held accountable for the actions of the firm. It is not a guaranteed right; depending on the specifics of the case, the court may determine that the shareholder is or is not at fault.

“Shareholders may shelter behind the principle of corporate veil, certain that their obligation does not extend beyond the value of their shares,” according to the Cambridge Dictionary.

The Corporate Veil is a safeguard that protects the members from the company’s action. In Layman’s terms, if a company violates any law or incurs any liability, the members cannot be held liable⁴. Thus, shareholders get protection from the acts of the company.

Relevant Case Law

Salomon v Salomon-

In this case, Mr. Solomon ran a shoe and boot manufacturing company. Solomon formed "A Salomon & Co. Ltd." with the help of seven subscribers: himself, his wife, a daughter, and four sons. Each shareholder had a share worth one British pound. For 39000 pounds, the corporation paid Salomon for his business; the acquisition price was split into 10000 pounds in fully paid 1 pound shares, 20,000 pounds in completely paid 1 pound shares, and the remaining amount in cash.

In less than a year, the business encountered problems, and liquidation proceedings were initiated. The company's assets were completely owned by Salomon, and they were not even enough to pay off the company's debts to its insured creditors. Since the Act merely needed seven members to have at least one share apiece and because Salomon is distinct from Salomon & Co. Ltd., the House of Lords unanimously determined that the company had been properly founded.

In addition, it was determined in *Lee v. Lee's Air Farming Ltd.* that Lee and the Company had a legal contract of employment, making Lee a worker as defined by the Act. One person may serve in a dual capacity as a director and an employee of the same corporation, which was a logical outcome of the Salomon case result.

In case of *Life Insurance Corporation of India v. Escorts Ltd, Supreme Court of India held that*, “It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of public interest, the effect on parties who may be affected, etc.”⁵.

Grounds for lifting Corporate veil

- Fraud

It is not surprising that no business can commit fraud on its own. Such crimes require a human agent to be actively involved in order to be committed. As a result, precautions can be taken to stop fraudulent activity in the future.

If the companies are deemed to be a hoax or "Sham," the courts have the jurisdiction to lift the corporate veil. These kinds of businesses are merely cloaks, and it is possible to miss the genuine culprit by ignoring their traits.

- Determine True Character of the Company

Where starting a firm has as its only objective the pursuit of profits, a business won't consciously make an effort to benefit society. However, it might decide to hurt people instead.

In the case of *Daimler Co. Ltd. vs. Continental Tyre and Rubber Co. Ltd. (1916)*, A German business formed a private company in England for selling motor tyres made in Germany. The German firm owns virtually all of the business's shares, and all of the company's directors are Germans⁶.

The firm was deemed by the House of Lords to be an enemy company for trade purposes because German forces effectively controlled or administered it. The court ruled that it would be against public policy for them to conduct business together, so the firm will not be allowed to move through with the action.

- Tax Evasion

Every earner is accountable for paying their fair share of taxes. A company is treated just like an individual in legal terms. Anyone who makes an illegal attempt to avoid this obligation is thought to be breaking the law.

Conclusion

An incorporated company dons a "corporate veil" as a result of incorporation, acquiring a "corporate personality," which conceals the stockholders who founded the business. Despite having an independent existence under the law, a company is an artificial person; as a result, shareholders, who are natural individuals, are hidden behind the corporate veil. Therefore, if this corporate personality is exposed or revealed, it is usually discovered that the shareholders or directors are hiding.

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