



Piercing the Corporate Veil? A critical analysis on *Prest v Petrodel Resources Ltd and Others*

Ko Tsun Kiu and Lam Wan Shu*

Abstract

Ever since the early development of company law, the notion of corporate veil has been one of the most fundamental legal principles. From Aron Saloman v A Saloman & Co Limited [1897] AC 22, it has long been established that courts recognise the separate legal entity of a company. However, in order to prevent misuse of the corporate form, the notion of veil-piercing was developed. In 2013, the United Kingdom Supreme Court handed down a seminal judgment on the law of corporate veil, Prest v Petrodel Resources Ltd and Others [2013] UKSC 34, in which Lord Sumption proposed the evasion and concealment principles. By classifying veil-piercing as evasion, his Lordship suggested that concealment cases were not truly veil-piercing. It was also held that the corporate veil could only be pierced where there was no available alternative remedy. As a result, the notion of veil-piercing has been significantly narrowed. On the other hand, Lord Walker in the same judgment disagreed with Lord Sumption's formulation, suggesting that veil-piercing was just a label and not a doctrine. This paper is in agreement with Lord Walker's observation that the notion of veil-piercing is not a doctrine but a label. This work is developed from a previous work of the authors. We would like to acknowledge Ms. Ho Ho Chun and Ms. Marta Gonzalez Ruano Calles for their contributions to the previous work.

Introduction

In *Aron Saloman v A Saloman & Co Limited (Saloman)*,¹ it was held that a company and the individuals behind it would enjoy separate legal personalities.² However, there are circumstances where the court can pierce the corporate veil to impose liability on the individuals behind the company, such as directors and shareholders.³ In *Prest v Petrodel Resources Ltd and others (Prest)*,⁴ Lord Sumption, Lady Hale, Lord Wilson and Lord Mance described 'veil-piercing' as a 'well-established' principle,⁵ while Lord Neuberger and Lord

* Final-year LL.B students at the City University of Hong Kong. The authors would like to thank the Editorial Board and the peer reviewer for their assistance in this paper. Usual caveats apply.

¹ [1897] AC 22.

² *ibid* 51.

³ Stefan Lo and Charles Qu, *Law of Companies in Hong Kong* (3rd edn, Sweet & Maxwell 2018) 119.

⁴ *Prest v Petrodel Resources Ltd and others* [2013] UKSC 34.

⁵ *ibid* [27], [89], [99].

Clarke described the principle of ‘veil-piercing’ as a doctrine.⁶ Lord Walker, however, was reluctant in adopting such terminology.⁷ He doubted the existence of an independent doctrine of ‘veil-piercing’,⁸ since there were no clear examples supporting its existence. In practice, he suggested that the notion of ‘veil-piercing’ was supported by other statutory provisions or common law principles.⁹ He therefore described veil piercing as a “label” which was used to indicate cases in which the court imposed liability of the company on the controller of the company based on either statutory provisions or common law grounds such as equity and trust.¹⁰ This paper agrees with Lord Walker’s proposition and argues that veil-piercing is not a doctrine - a coherent legal principle that is widely adhered to.¹¹ Part I of this paper will argue that the development of veil-piercing in common law has been inconsistent; Part II will argue that the term ‘veil-piercing’ is merely a label employed by judges to describe situations where the court imposes liability of the company to the person behind the company based on existing common law grounds; Part III will argue that the current ‘doctrine of veil-piercing’ is inconsistent and therefore no coherent principle or rule of law regarding veil-piercing exists.

It should be noted that this paper will only discuss the ‘principle of veil-piercing’ from a doctrinal standpoint, and will not discuss the merits of the principle. In addition, it should be noted that the following analysis is based on the fact that Lord Sumption’s formulation in *Prest*¹² is the current law of ‘piercing the corporate veil’.¹³

I. Inconsistency in the development of ‘veil-piercing’

This part will illustrate that the principles for ‘piercing the corporate veil’ have been inconsistent starting from *Saloman*¹⁴ to *Prest*.¹⁵ As a result, a coherent doctrine of veil-piercing does not exist.

Before *Prest*¹⁶, the previous principles of piercing the corporate veil may not be clear.¹⁷ From *Adam v Cape Industries plc (Adam)*,¹⁸ it was held that the principles from *Saloman*¹⁹ - separate legal entity - cannot be freely disregarded – the court can only pierce the veil if both control of the company and impropriety are present.²⁰ Only in special circumstances, where it is shown that the company is being used as a façade to conceal true facts (impropriety)²¹ can the veil be pierced according to *Woofson v Strathclyde Regional Council*.²² In *Gencor ACP Ltd v Dalby (Gencor)*²³ and *Trustor AB v Smallbone (No.2) (Trustor)*,²⁴ both cases held that the corporate veil was pierced on the basis that the companies were ‘used as a façade to conceal the true facts’.²⁵

⁶ *ibid* [63], [103].

⁷ *ibid* [106].

⁸ Mohamed E. Khimji and Christopher C. Nicholls, ‘Piercing the Corporate Veil Reframed as Evasion and Concealment’ (2015)

48 *University of British Columbia Law Review* 401.

⁹ *Prest* (n.4) [106].

¹⁰ *ibid*.

¹¹ Bryan A. Garner, *Black's Law Dictionary* (10th edn, West, 2014).

¹² *Prest* (n.4).

¹³ *Antonio Gramsci Shipping Corp v Reoleto Ltd* [2013] Bus LR 239 [65].

¹⁴ *Saloman* (n.1).

¹⁵ *Prest* (n.4).

¹⁶ *ibid*.

¹⁷ Nicholas Bourne, *Bourne on Company Law* (7th edn, Routledge, 2016) 25.

¹⁸ [1990] Ch 433.

¹⁹ *Saloman* (n.1).

²⁰ *Adam* (n.18) [536] and [542].

²¹ *Ben Hashem v Shayif* [2008] EWHC 2380 (Fam) [159] - [164].

²² *Woofson v Strathclyde Regional Council* 1978 S.C. (H.L.) 90, 95-96 (Lord Keith)

²³ [2000] EWHC 1560 (Ch).

²⁴ [2001] EWHC 703 (Ch).

²⁵ Stefan Lo and Charles Qu, *Law of Companies in Hong Kong* (n.3), 138-139.

In *Ben Hashem v Shayif (Ben Hashem)*,²⁶ it was held that control of the company has to be proven and that the impropriety has to have linkage with “the use of the company’s structure to avoid or conceal liability”.²⁷ However, there are cases where veil-piercing was not as narrowly applied as it was in the above cases. For example, the corporate veil can be pierced even if there are other alternative remedies.²⁸ There had even been cases where the veil was once pierced because justice called for it for example, *Wallersteiner v Moir*²⁹ and *Mubarak v Mubarak*³⁰ or in a situation where a finding of wrongdoing is absent as held in *Kremen v Agrest (No 2)*.³¹

An attempt at clarifying the position on piercing the corporate veil was made in *Prest*³² by Lord Sumption. *Prest*³³ was a matrimonial case in which the Supreme Court did not pierce the corporate veil since the company was established prior to the matrimonial dispute.³⁴ Lord Sumption identified two separate principles regarding ‘veil-piercing’ - evasion and concealment.³⁵ In his opinion, a lot of the previous ‘veil-piercing’ cases were not in fact piercing the veil as those cases were actually invoking the concealment principle - merely looking behind the veil to impose liabilities on the wrong-doer.³⁶ On the other hand, veil-piercing can exist only in evasion cases where a person under an existing legal obligation or liability deliberately evades or frustrates said obligation or liability by interposing a company under his control.³⁷ This implies that the law on ‘veil-piercing’ has been inconsistent as Lord Sumption rejected prior cases on what qualifies as ‘veil-piercing’. Furthermore, regarding the issue of the threshold of the principle, Lord Sumption rejected the opinion of the Court of Appeal in *VTB Capital plc v Nutritek International Corp (VTB)*³⁸ and stated that veil-piercing is only to be used as a last resort.³⁹ Even though Lord Sumption’s formulation was *obiter dicta* in the case,⁴⁰ it was affirmed by the subsequent English Court of Appeal case *Antonio Gramsci Shipping Corp v Reoletos Ltd.*⁴¹ Hence, the current law of ‘veil-piercing’ is Lord Sumption’s evasion principle.

II. ‘Piercing the corporate veil’ as a label

Lord Walker suggested in *Prest*⁴² that the ‘doctrine of piercing the corporate veil’ was merely a label ‘to describe the disparate occasions on which some rule of law [would produce] apparent exceptions to the [separate legal entity] principle’⁴³ in *Saloman*.⁴⁴ It is a label because the term ‘piercing the corporate veil’ does not exist as an independent doctrine - it must operate with some statutory provisions or other pre-existing common law principles to impose liabilities of the company to the controller.⁴⁵ This part will illustrate this

²⁶ *Ben Hashem* (n.21).

²⁷ *ibid* [162].

²⁸ *Dadourian Group International Inc v Simms* [2006] EWCA Civ 399; *VTB Capital plc v Nutritek International Corp* [2013] UKSC 5.

²⁹ [1974] 1 WLR 991.

³⁰ [2008] JRC 136.

³¹ [2010] EWHC 3091 (Fam).

³² *Prest* (n.4).

³³ *ibid*.

³⁴ *ibid* [36].

³⁵ *ibid* [28].

³⁶ *ibid* [33].

³⁷ *ibid* [35].

³⁸ [2012] EWCA Civ 808.

³⁹ *Prest* (n.4) [28].

⁴⁰ Brenda Hannigan, ‘Wedded to Saloman: evasion, concealment and confusion on piercing the veil of the one-man company’ (2015) 50 *Irish Jurist* 11.

⁴¹ *Antonio Gramsci* (n.13).

⁴² *Prest* (n.4).

⁴³ *ibid* [106].

⁴⁴ *Saloman* (n.1).

⁴⁵ Khimji and Nicholls (n.8).

proposition by analysing a few cases in which the judges adopted the ‘doctrine of piercing the corporate veil’ as a label and can be resolved by pre-existing common law principles, such as tort law and law of trust. This part will also demonstrate how the court has not pierced the corporate veil because the corporate entity in the relevant cases can, in fact, be replaced by a natural person.⁴⁶

In *Prest*,⁴⁷ Lord Sumption suggested that the injunctions granted against the company and Mr. Gilford in *Gilford Motor Co Ltd v Horne (Gilford Motor)*⁴⁸ were based on the evasion and concealment principles respectively.⁴⁹ The injunction against the company in that case was based on the ‘doctrine of piercing the corporate veil’.⁵⁰ However, it has been suggested that the injunction against the company is not piercing the corporate veil at all.⁵¹ In fact, as noted by Lord Sumption himself,⁵² the injunction can be granted as an equitable remedy on the ground of tort law.⁵³ Moreover, Lord Sumption also suggested that ‘piercing the corporate veil’ could only be invoked where no alternative legal principles were available.⁵⁴ If that is the case, it would be unlikely for the court in *Gilford Motor*⁵⁵ to have pierced the corporate veil since an action in tort law was available. Moreover, in *VTB*,⁵⁶ Lord Neuberger in the Supreme Court had stated that there would be no difference if the company in *Gilford Motor*⁵⁷ was replaced by Mrs. Gilford,⁵⁸ which was similar to what happened in *Smith v Hancock*.⁵⁹ Therefore, the decision in *Gilford Motor*⁶⁰ should not be interpreted as ‘veil-piercing’. Consequently, based on the above analysis, the better and logical view is that the court in *Gilford Motor*⁶¹ adopted tort law, an existing legal principle, to achieve the same result as ‘piercing the corporate veil’, and the term ‘veil-piercing’ is merely a label for the court to describe such situations where the separate legal entity is not given effect entirely by the court under established common law principles.

Another case is *Jones v Lipman*.⁶² Lord Sumption classified the specific performance order against the company as ‘piercing the corporate veil’ under the evasion principle.⁶³ However, the same outcome can be achieved through the law of trust.⁶⁴ The company was holding the property as a trustee and the beneficiary was Mr. Jones because the company received the property with prior notice of Mr. Jones’ equitable interest in the property.⁶⁵ Alternatively, a specific performance order could be granted against Mr. Lipman on the basis of his ‘control of the company’⁶⁶ and that ‘he was in a position to have procured the completion of the contract’.⁶⁷ Since the law of trust is adequate in achieving a similar result, the court did not, in theory, ‘pierce

⁴⁶ Derek French and others, *Mayson, French & Ryan on Company Law* (31st edn, 2014-2015) 128.

⁴⁷ *Prest* (n.4).

⁴⁸ [1933] Ch 935.

⁴⁹ *Prest* (n.4) [29].

⁵⁰ *ibid.*

⁵¹ *VTB Capital plc v Nutritek International Corp* [2013] UKSC 5 [134].

⁵² *Prest* (n.4) [29].

⁵³ Charlotte Kouo, ‘Post-Prest Corporate Group Veil Piercing: Alternative Avenues to Justice’ (2016) 4(2) *Legal Issues Journal* 65.

⁵⁴ *Prest* (n.4) [26].

⁵⁵ *Gilford Motors* (n.48).

⁵⁶ *VTB* (n.51).

⁵⁷ *Gilford Motors* (n.48).

⁵⁸ *VTB* (n.51) [134].

⁵⁹ [1894] 2 Ch 377.

⁶⁰ *Gilford Motors* (n.48).

⁶¹ *ibid.*

⁶² [1962] 1 WLR 832.

⁶³ *Prest* (n.4) [30].

⁶⁴ Susan McLaughlin, *Unlocking Company Law* (3rd edn, Routledge 2015) 100.

⁶⁵ *ibid.*

⁶⁶ John Birds and others (ed), *Boyle & Birds’ Company Law* (9th edn, Jordan Publishing 2014) 63.

⁶⁷ *ibid.*

the corporate veil' which can only be used as a last resort.⁶⁸ Therefore, *Jones v Lipman*⁶⁹ should be viewed as deciding on the law of trust, and the court adopted the label, 'piercing the corporate veil' for such situations.

*The Tjaskemolen*⁷⁰ is a case cited by Lord Neuberger in *Prest*⁷¹ as an authority for the lack of coherent principle in 'veil-piercing'.⁷² Profer AG, the plaintiff, was claiming for breach of contract to charter against, Bayland Navigation Inc, the defendant, and asked the court to arrest the defendant's vessel.⁷³ The defendant then transferred the vessel to Golden International Navigation SA, another company.⁷⁴ Both the defendant and the transferee company had a common controller.⁷⁵ The court had to decide whether the claimant was still entitled to arrest the vessel.⁷⁶ This is a classic example of evasion of existing liability.⁷⁷ Clark J agreed that the court could 'pierce the corporate veil' in such a case.⁷⁸ However, upon closer examination of the judgment, the judge was actually applying the law of trust instead of 'veil-piercing'.⁷⁹ Clark J decided in favour of the plaintiff because the beneficiary ownership remained with the defendant, albeit the legal owner was the transferee company.⁸⁰ He referred to such situation as 'piercing the corporate veil',⁸¹ which showed some support to Lord Walker's proposition that 'piercing the corporate veil' is just a label. The outcome would have been the same if the corporate entity was replaced by a natural person.⁸² Therefore, the court merely employed the term 'veil-piercing' as a label.

Even *Stone & Rolls Ltd v Moore Stephens*,⁸³ a case which was cited by Lord Walker in *Prest*⁸⁴ as the example of the 'residual category in which the metaphor operates independently',⁸⁵ is hardly a 'veil-piercing' case.⁸⁶ In that case, the fraudulent sole shareholder cum director brought a claim in the name of the company against the company's auditor.⁸⁷ The House of Lords held that the auditor could rely on the defence of illegality.⁸⁸ Lord Walker in that case adopted the principle of 'sole actor'⁸⁹ to attribute the fraud of the sole shareholder cum director of the company to the company itself,⁹⁰ which was consistent with the separate legal entity of the company.⁹¹ The doctrine of attribution and 'veil-piercing' are conceptually different and *Stone & Rolls Ltd*⁹²

⁶⁸ *Prest* (n.4).

⁶⁹ *Jones* (n.62).

⁷⁰ *The Tjaskemolen* [1997] C.L.C 521.

⁷¹ *Prest* (n.4).

⁷² *ibid* [75].

⁷³ *The Tjaskemolen* (n.70).

⁷⁴ *ibid*.

⁷⁵ *ibid* 537.

⁷⁶ *ibid* 535.

⁷⁷ Derek French and others, *Mayson, French & Ryan on Company Law* (n.46) 136.

⁷⁸ *The Tjaskemolen* (n.70) 533.

⁷⁹ *ibid* 537.

⁸⁰ *ibid*.

⁸¹ *ibid* 532.

⁸² *Yukong Lines Ltd v Rendsburg Investments Corporation and Others (No 2)* [1998] 1 WLR 294, 308.

⁸³ [2009] UKHL 39.

⁸⁴ *Prest* (n.4).

⁸⁵ *ibid* [106].

⁸⁶ Stephen Bull, 'Piercing the Corporate Veil - In England and Singapore' (2014) 1(1) Singapore Journal of Legal Studies 24.

⁸⁷ *Stone & Rolls Ltd* (n.83) [126] - [127].

⁸⁸ *ibid* [194].

⁸⁹ *ibid* [162].

⁹⁰ *ibid* [187] - [188].

⁹¹ Zhong Xing Tan, 'New Era of Corporate 'veil-piercing': Concealed Cracks and Evaded Issues' (2016) 28 Singapore Academy of Law Journal 209.

⁹² *Stone & Rolls Ltd* (n 85).

has yet to be cited as direct authority for the doctrine of 'veil-piercing'.⁹³ Therefore, it is doubtful as to whether this case mentioned by Lord Walker in *Prest*⁹⁴ would be a true example of 'veil-piercing'.⁹⁵

It should be noted that concealment cases suggested correctly by Lord Sumption are not piercing the corporate veil.⁹⁶ Those cases merely aim to identify the real actors behind the corporate legal entity by conventional common law principles.⁹⁷ To illustrate, in *Gilford Motor*,⁹⁸ the injunction granted against Mr. Horne was based on the concealment principle according to Lord Sumption.⁹⁹ By employing the term 'mere cloak or sham' in *Gilford Motor*,¹⁰⁰ Lord Sumption suggested that Lord Hanworth granted the injunction to Mr. Horne without piercing the corporate veil.¹⁰¹ Although both Lord Sumption and Lord Hanworth did not explain how exactly the concealment principle operated in that case, it had been argued that the injunction was based on agency law, under which the company was the agent of Mr. Horne.¹⁰² Therefore, concealment cases are not piercing the corporate veil.

In the above analysis, it has been shown that even in the 'veil-piercing' cases identified by Lord Sumption the act of piercing the corporate veil is unnecessary and can be replaced by other legal methods which would resolve the matter.¹⁰³ Instead, those cases should be viewed as being decided on alternative common law grounds under the label of 'veil-piercing'. As a result, it can be said that the court has never pierced the corporate veil. At best, the court can only be said to have refused to give full effect to the separate legal entity of the company based on existing common law grounds. The term 'piercing the corporate veil' is merely a label to describe situations where the court employs conventional legal principles, such as law of trust, to 'disregard' the limited liability doctrine and the separate legal entity doctrine. Therefore, it is possible to infer that a specific doctrine of 'veil-piercing' has yet to exist.

III. 'Piercing the Corporate Veil' is not a Doctrine

To illustrate that 'piercing the corporate veil' is not a doctrine, as in a coherent principle or rule of law, this part argues that there is no consistent principle on the court's application of common law principles under the label of 'veil-piercing'. Furthermore, there are incoherent rules suggested by the courts regarding the threshold of 'veil-piercing'.

Firstly, under the label of 'veil-piercing', there is no one coherent principle guiding when and how the court should apply existing common law principles to impose the liability to the person behind the company.¹⁰⁴ Prior to *Prest*,¹⁰⁵ a number of cases that claimed to have pierced the veil were in fact adopting existing common law principles such as agency and trust law to evade using separate legal entity and limited liability doctrines.¹⁰⁶ The two cases mentioned by Lord Sumption are evidence of this.¹⁰⁷ In *Jones v Lipman*,¹⁰⁸ as

⁹³ Tan (n.91); *Jetivia SA v Biltal (UK) Limited (in liquidation)* [2015] UKSC 23.

⁹⁴ *Prest* (n.4).

⁹⁵ Ernest Lim, 'Salomon Reigns' (2013) 129 Law Quarterly Review 480, 484-485.

⁹⁶ *Prest* (n.4) [35].

⁹⁷ *ibid.*

⁹⁸ *Gilford Motors* (n.48).

⁹⁹ *Prest* (n.4) [29].

¹⁰⁰ *Gilford Motors* (n.48).

¹⁰¹ *ibid.*

¹⁰² *Prest* (n.4) [69]-[72].

¹⁰³ Brenda Hannigan, *Company Law* (4th edn, OUP 2016) 57.

¹⁰⁴ Susan McLaughlin, *Unlocking Company Law* (n 64) 97.

¹⁰⁵ *Prest* (n.4).

¹⁰⁶ *Prest* (n.4) [31] - [32].

¹⁰⁷ [2012] EWCA Civ 808 [79].

¹⁰⁸ *Jones* (n.62).

argued above, the court's ruling should be viewed as an example of applying the law of trust under the label of 'veil-piercing'.¹⁰⁹ Similarly, in *Gilford Motor*,¹¹⁰ the court should be viewed as applying the law of agency or tort law in granting the injunction to the company. Since the courts were merely applying different existing common law principles under the label of "veil-piercing", and that the courts can apply different principles on a case-by-case basis, there is no coherent principle for the court to adhere to when employing the label.¹¹¹ Hence, veil-piercing is not a doctrine in the sense of a coherent rule of law for the courts to adhere to.

It should be noted that since the beginning, from *Adam*¹¹² to *Ord v Belhaven Pubs Ltd*¹¹³ to *Ben Hashem*,¹¹⁴ the court seems to have been suggesting that control and impropriety were elements for veil-piercing.¹¹⁵ These two elements were adopted in Lord Sumption's formulation, with evasion as the element of impropriety and an implied element of control.¹¹⁶ However, such a notion is not accurate. Although in *Ben Hashem*,¹¹⁷ Munby J suggested that *Gilford Motor*,¹¹⁸ *Jones v Lipman*,¹¹⁹ *Gencor*¹²⁰ and *Trustor*¹²¹ were true veil-piercing cases,¹²² none of these cases are truly 'veil-piercing'. For the first two cases, they were decided on the existing common law grounds under the label of veil-piercing; whereas the latter two were concealment cases, which were not veil-piercing. Moreover, the elements of control and impropriety are at best the justification for veil-piercing.¹²³ It is not an independent ground of action like law of trust and agency which the court can employ to find the wrongful defendants liable. Therefore, control and impropriety are situations where the court should pierce the veil, but they do so by employing the label 'veil-piercing' under which common law principles are applied.

Secondly, Lord Sumption's formulation of 'veil-piercing' is inconsistent with the rules suggested by previous cases on this issue. Particularly, the current law in *Prest*¹²⁴ is inconsistent with the rules in terms of the threshold of 'veil-piercing'. Lord Sumption has suggested that the 'doctrine of piercing the corporate veil' can only be invoked as the last resort - where alternative remedies are not available to decide the case.¹²⁵ On the other hand, the Court of Appeal in *VTB*¹²⁶ held that it was not necessary to be the last resort for the court to invoke the 'doctrine of veil-piercing'.¹²⁷ In rejecting Lord Lloyd's proposition, Lord Sumption cited *Ben Hashem*¹²⁸ as authority.¹²⁹ However, whether *Ben Hashem*¹³⁰ was in fact suggesting that veil-piercing could only be invoked as the last resort is questionable, as Munby J in that case employed the language of 'necessity',

¹⁰⁹ McLaughlin (n.64).

¹¹⁰ *Gilford Motors* (n.48).

¹¹¹ Nicholas Bourne, *Bourne on Company Law* (n.17) 25.

¹¹² *Adam* (n.18) 544.

¹¹³ *Ord v Belhaven Pubs Ltd* [1998] 2 BCLC 447, 457.

¹¹⁴ *Ben Hashem* (n.21) [159] - [164].

¹¹⁵ Brenda Hannigan, *Company Law* (n.105) 48.

¹¹⁶ Stefan Lo and Charles Qu, *Law of Companies in Hong Kong* (n.3) 124.

¹¹⁷ *Ben Hashem* (n.21).

¹¹⁸ [1933] Ch 935.

¹¹⁹ *Jones* (n.64).

¹²⁰ *Gencor* (n.23).

¹²¹ *Trustor* (n.24).

¹²² [2008] EWHC 2380 (Fam) [166].

¹²³ See Christopher W Peterson, 'Piercing the Corporate Veil in Nebraska' (2018) 51 Creighton Law Review 247.

¹²⁴ *Prest* (n.4).

¹²⁵ *ibid* [35].

¹²⁶ *VTB* (n.38).

¹²⁷ *ibid* [79].

¹²⁸ *Ben Hashem* (n.21).

¹²⁹ *Prest* (n.4) [35].

¹³⁰ *Ben Hashem* (n.21).

not of last resort.¹³¹ Necessity does not mean last resort.¹³² Although the Supreme Court has the ability to overrule the judgment at the Court of Appeal, it is doubtful as to the strength of Lord Sumption's reasoning in this regard. Therefore, there have been inconsistencies regarding whether the 'doctrine of veil-piercing' can be invoked when other remedies are available and a coherent principle on this point cannot be found.

Moreover, if the 'doctrine of veil-piercing' can only be invoked as a last resort, Lord Sumption classifying *Gilford Motor*¹³³ and *Jones v Lipman*¹³⁴ as veil-piercing is inconsistent because, as mentioned above, there are alternative remedies to those cases. Although Lord Sumption did not cite these two cases as authority to illustrate the rule that veil-piercing can only be invoked as a last resort, his proposition should be applicable to the cases which he did cite. If those examples his Lordship cited cannot even meet his own proposition, it follows, with respect, that his Lordship's formulation is inconsistent. In addition, given Lord Sumption's formulation in *Prest*¹³⁵ has been held to be the current law of 'veil-piercing',¹³⁶ the inconsistency within his own formulation implies that the evasion principle of 'veil-piercing' cannot be a coherent principle itself.

Conclusion

This paper demonstrates the inconsistency in the development of the 'doctrine of veil-piercing' from *Saloman*¹³⁷ to *Prest*,¹³⁸ and under the current law formulated by Lord Sumption in *Prest*.¹³⁹ Since there has been inconsistency throughout the development of the law, Lord Walker was accurate to suggest that the so-called 'doctrine of veil-piercing' was not a doctrine at all, in the sense of a coherent principle or rule of law.¹⁴⁰ Moreover, this paper also demonstrated Lord Walker's proposition that the term 'veil-piercing' was merely a label because it was used by judges to describe the situation where the separate legal entity and limited liability doctrine were not given full effect based on existing common law principles such as law of trust. Therefore, this paper favours the proposition suggested by Lord Walker in *Prest*¹⁴¹ and that piercing the corporate veil is not a doctrine.

¹³¹ Kim Ho May, 'Piercing the Corporate Veil as a Last Resort: *Prest v Petrodel Resources Ltd*' (2014) 26(1) Singapore Academy of Law Journal 249.

¹³² See *The Rugby Football Union v Consolidated Information Services Ltd* [2012] UKSC 55.

¹³³ *Gilford Motors* (n.48).

¹³⁴ *Jones* (n.62).

¹³⁵ *Prest* (n.4).

¹³⁶ *Antonio Gramsci* (n.13).

¹³⁷ *Saloman* (n.1).

¹³⁸ *Prest* (n.4).

¹³⁹ *ibid*.

¹⁴⁰ *ibid* [106].

¹⁴¹ *Prest* (n.4).