"THE CORPORATE VEIL DOCTRINE BEING AN EXCEPTION TO THE GENERAL RULE OF LIMITED LIABILITY WAS CREATED TO PREVENT IN JUSTICE."THOMAS K. CHENG. *THE CORPORATE VEIL DOCTRINE REVISITED: A COMPARATIVE STUDY OF THE ENGLISH AND THE U.S CORPORATE VEIL DOCTRINE*, 34 B.C. INT'L & COMP. L. REV. 329 (2011), AVAILABLE AT HTTP://LAWDIGITALCOMMONS.BC.EDU/ICLR/VOL34/ISS2/2. AN EXAMINATION OF THE ABOVE STATEMENT IN THE LIGHT OF THE PROVISIONS OF THE COMPANIES AND ALLIED MATTERS ACT 1990 TAKING CARE TO COMPARE THE SAID PROVISIONS WITH SIMILAR ONE UNDER ENGLISH LAW.

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1.0 INTRODUCTION

The word "person" is derived from the Latin word "persona" which meant a mask worn by actors playing different roles in the drama. Until the sixth century the word was used to denote the part played by a man in life. Thereafter, it began to be used in the sense of a living being capable of having rights and duties. Many writers have restricted the use of term personality to human being alone, because it is only they, who can be subject matter of rights and duties and therefore, of legal or juristic personality. But it must be stated that the term personality

has a far wider connotation in law and includes gods, angels, idols[1]and corporations[2] etc, although they are not human beings. On the contrary, there may be living persons in olden times such as slaves, who were not treated as persons in the eyes of law, because they were not capable of having rights and duties and the slavery is now completely abolished in all civil societies of the world.[3] Likewise, under Hindu law in Indian an ascetic[4] (Sanyasi) who has renounced the world ceases to have any proprietary rights and his entire estate is passed on to his heirs and successors and his legal personality completely lost.[5]

Salmond defines a person as "any being to whom the law regards as capable of rights and duties. Any being that is so capable, is a person, whether human being or not and nothing that is not so capable is a person even though he be a man".[6]

Thus 'persons' in juristic terms are of two kinds, namely natural and legal. The former are human beings capable of rights and duties while the later i.e. the legal persons are being who may be real (natural) or imaginary (artificial), in whom law vests rights and imposes duties and thus attributes personality by way of fiction. A juristic person is not a human being. It may be any other subject matter; either a thing or a mass of property or group of human beings to which they attributes personality. In other words, juristic persons may be defined as things, mass of property or an institution upon whom the law confers a legal status and who in the eyes of law possess rights and duties as a natural person.[7]

The doctrine of the corporate veil was developed in the UK, where it finds its most frequent usage in case law. In practice, there are three occasions when the court has lifted the veil: application of the terms of a contract or statute, or as a matter of common law. Cases in which there is a need to lift the corporate veil cannot be described as standard. Despite numerous

[1] P.N. Mullick v. P.K. Mullick 1925 LR 52; Ind App 245 Cited From Prof. Aggrawal Nomita's Jurisprudence 8th Ed.2010 Page 169
[2] Saloman v. Saloman (1987) AC 22
[3] League of Nations adopts Slavery Convention abolishing Slavery in 1926.
[4] Someone who practices self denial a a spiritual discipline. E.g Some religious congregations of the Roman Catholics like Monks, nuns etc.
[5] Dr. Paranjape N.V. on Studies in Jurisprudence, legal theory 4th Ed.(Reprint 2006) Page 314
[6] Fitzerald P.J.; Salmond on Jurisprudence 1988 (12th Ed.) page 299
[7] Supra Note 5, Page 315

criticisms related to the issue of the law on lifting the veil of incorporation, it seems to be an area worthy of further investigation.[8]

This paper seeks to examine the doctrine of corporate veil under the provision of Companies and Allied Matters Act 1990 in Nigeria and the position under the English Law.

2.0 CORPORATE VEIL

Corporate personality is the fact stated by the law that a company is recognized as a legal entity distinct from its members. **Salomon v. Salomon & Co,**[9] where Lord McNaughton adumbrated the legal personality of a company thus: When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate capable forthwith, to use the words of enactment, of exercising all the functions of an incorporated company, those are strong words. The company attains maturity on its birth. There is no period of minority - no internal incapacity. I cannot understand how a body corporate thus made capable by statute can lose individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum and although it may be that after incorporation, the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them, nor are the subscribers as members liable in any shape or form, except to the extent and in the manner provided by the Act. A company with such personality is an independent legal existence separate from its shareholders, directors, officers and creators.[10] This is famously known as the veil of incorporation.

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[8] The Doctrine of Lifting the Corporate Veil, http://eltoma-global.com/knowledge-base/company-law-the-uk-doctrine-of-lifting-the-corporate-veil.html accessed on 5th August 2019.

[9] (1897) AC P. 51 the facts of the case are as follows- One Mr. Soloman was the owner of a business which he turned in to a limited liability company. The other members of the company were his wife and children. The total number of issued shares were 20,007 of which Soloman took 20,001 shares and his family members took the remaining six. Soloman also took mortgage debenture to the amount of pound 1000 in part payment for the business. Later on the company became insolvent. The trial judge and the court of appeal held that the creditors had the prior claim to the assets since the company was a mere sham. The House of Lords reversed this, holding that the company was in law a person distinct from Soloman and that, therefore, Soloman was preferentially entitled to the assets as the secured creditors.

[10] Section 37 CAMA.

The principle in Nigeria was famously celebrated in the case of *Marina Nominees Ltd v. Federal Board of Inland Revenue*[11] where Aniagolu JSC (as he then was) stated as follows:

"….. the truth however is that it is a company registered under the Companies Act having its full legal status on the principles enunciated in *Salomon v. Salomon and Co Ltd*[12] and must be subject to all incidents of incorporation."

In Nigeria, the case of *Iyke medical Merchandise v. Pfizer Inc*[13] the court appraised the doctrine of juristic personality as "juristic person was recognized to include:

i. Natural persons, that is to say human beings
ii. Corporations aggregate and corporations sole with perpetual succession.
iii. Companies incorporated under the companies Act,
iv. Certain unincorporated associations granted the status of legal personae by law such as:
    a. Registered Trade Union
    b. Partnership and
    c. Friendly societies or sole proprietorships."

This doctrine was concretized in (iii) above with all the attendant incidents of incorporation and within the Nigerian context. The case of *A.C.B v. Emostrade Ltd*[14] recently decided by the Supreme Court; per UWAIFO JSC also held that

> "What was needed to be proved as to the juristic personality of the plaintiff was whether there was evidence that it was duly incorporated"

The answer to this judicial poser is that upon production of the certificate of incorporation the company wears the elegant corporate personality cloak. To buttress this, the court in *Habib Nig. Bank Ltd v. Ochete*[15] stated that as from the moment of incorporation, it legally assumed a separate and distinct personality from the plaintiff and his wife as well as others behind it. It is thus submitted that from that moment it puts on a corporate veil beyond which no one can penetrate except it is lifted in a manner authorized by law. It could own property and accept transfer of assets and liabilities in its corporate name.

[11] (1986) 2 NWLR (PT 20) @ Pg 61
[12] Supra
[13] (2001) FWLR (PT 53) 62
[14] *(2002) FWLR (PT 104) 540*
[15] (2001) FWLR (PT 54) 384

The doctrine further postulates that only a company can bring an action for any wrong done against it since it has its own name by virtue of its incorporation.[16] The legal implication also appears to be that a company not registered in Nigeria is a legal person and may sue in a Nigerian court. This postulation was given judicial approval in the case of *Kitchen Equip W.A. Ltd v. Staines Catering Equip Int Ltd.*[17]

The incident of incorporation include; perpetual succession, limited liability,propriety interest, capacity to sue and be sued, etc.

2.1 LIFTING OF CORPORATE VEIL

As we know that after incorporation, a company becomes a legal person separate and distinct from its members. It has a corporate personality of its own with rights, duties and liabilities separate from those of its individual members. Thus, a veil of incorporation exists between the company and its members and due to this a company is not identified with its members. In order to protect themselves from the liabilities of the company, its members often take the shelter of the corporate veil. Sometimes this corporate veil is used as a vehicle of fraud or evasion of tax etc. To prevent unjust and fraudulent acts, it becomes necessary to lift the veil of the corporation or disregard the corporate personality to look into the realities behind the legal façade and to hold the individual member of the company liable for its acts or liabilities.[18]

The doctrine of the lifting the veil of corporate personality is a doctrine that advocates going behind and looking behind the juristic or corporate personality of a body corporate. Undoubtedly, as a general rule, a company is a person distinct and separate from its members. But, in exceptional cases, that veil of corporate personality can be lifted; and looking behind the veil, one could see the corporate personality fading away. Law courts have, in exceptional cases, cracked the shell of corporate personality and have looked upon a corporation and its members from a different point of view. Courts have lifted the veil, with the objective of preventing fraud. In such cases the members of the corporation are considered as persons working for the corporation. In *Tata Engineering & Loco-motive Co. Ltd. v. State of Bihar*[19], although the veil was not lifted, however the doctrine of lifting the veil of the corporation was considered at great

[16] Ramachand v Ekpeyong (1975) 5 S.C. 29
[17] UNREPORTED FCAL/17/82
[18] Rai Kailash on Company Law 10th Ed. 2006 Page 47
[19] 1964, 1 S.C.J. 666

length. The law is complicated by the facts that the courts do not always take account of the distinct personality of a company. It renders impossible to any consistent theory as to the nature of personality and emphasizes more strongly than anything else the need to proceed empirically in understanding the law. The courts do in some cases pierce (lift) the veil of legal personality in order to detect and redress frauds upon creditors; the evasion of obligations or statutes or to suppress tax evasion. In England, the problem was faced soon after War.

Under the English doctrine there are a number of exceptions to the separate legal personality principle; i.e. where the courts are prepared to lift the 'mask' or 'veil' of incorporation and look at what has really been going on behind the scenes in the company. To rely on the dictum of Devlin J, in *Bank Handel v. Slatford*[20] who opined as follows:

> "… the legislature can forge a sledge hammer capable of cracking open the corporate shell…"

Gowers complements this by further opining that:

> "… the courts have sometimes been prepared to have a crack…"[21]

It could however be deduced from the above reasoning that the veil of incorporation can be pierced either by statutes or the courts to avert fraud and injustice on the person of the company.

In answer to the statutory flavour of lifting the veil, under the English law, section **165** of the UK Companies Act 1948 was given approval in the judicial conclusion of the master of the Rolls: Denning M.R where he lend credence to this by asserting in *Norwest Holst v. Secretary of State for Trade*[22] that;

> "The whole management and control is in the hands of the directors. They are self-perpetuating oligarchy; and are virtually unaccountable…. The question is asked: quis custodiet ipsos custodies? Who will guard the guards themselves…"

The answer to this poser was put forward by the Learned Lord Himself in the case of *Waller Steiner v. Moir*[23] as follows:

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[20] (1953) 1 Q.B 248 at 278
[21] P. Davies (ed.), *Gower & Davies: The Principles of Company Law*, 9th edn, (London: Sweet & Maxwell, 2008).
[22] Denning L.J Master of the Rolls
[23] (1978) 3 ALL E.R 217 @ 292

> "It is because this legislations are beyond the reach of ordinary individuals that this legislation has been passed so as to enable the Department of Trade appoint inspectors to investigate the affairs of the Company"

The whole essence of the appointment is to ensure that the veil is lifted for economic realities. There are two instances when the veil of incorporation may be lifted vis a vis Statutory and Court.

3.0 LIFTING THE VEIL UNDER COMPANIES AND ALLIED MATTERS ACT 2004

3.1 Number of Members falling below Legal Minimum: Section 93[24] provides that if a company carries on business without having at least two members and does so for more than six months, every director or officer of the company during that time that it so carries on business, after those six months, who knows that it is carrying on business with only one member is liable jointly and severally with the company for the debt of the company contracted during the period. In this circumstance, the officers and directors will share in the liability of the company. This section did not create an offence but only prescribe the consequences that flow from a company carrying on business for more than six months without the required number of members as stipulate by the law. It brings to the notice of the directors and officers the danger they are exposed to if they fail to comply with the provision of the CAMA.

3.2 Where the number of directors gets less than two: A director or member of a company who knows that a company carries on business after the number of directors has fallen below two for more than 60 days shall be liable for all liabilities and debts incurred by the company during that period when the company so carried on business.[25] In line with the above provision, when such situation is before the courts the practice is that the court pierces the veil of incorporation to know who actually were the directors.

3.3 Personal liability of Directors and Officers for Fraud: Section 290 of the Companies and Allied Matters Act (CAMA)[26] provides for personal liability of directors and officers. Accordingly, in circumstances where a company:

(a) Receives money by way of loan for specific purpose; or

[24] Companies and Allied Matters Act, Cap C 20, L.F.N 2004 (as amended)
[25] Section 246 (3) CAMA
[26] Cap C 20 LFN 2004

(b) Receives money or other property by way of advance payment for the execution of a contract or project; and

(c) With intent to defraud, fails to apply the money or other property for the purpose for which it was received, every directors or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received.[27]

This provision applies to catch not only those who borrow money from banks and divert it to their own use but also to those who hide under the cloak of a company to perpetuate fraud. The case of *PFS Ltd v. Jedia*[28] is quite instructive. In this case, there was an allegation of fraud. The court had found that the chairman and managing director of a company, though his assurance and warranty induced a person to place funds with his company for agreed returns, latter refused to pay on the excuse that his company's production was low. On the facts, the court found constructive fraud and held that it was a case aptly covered by Section 290 of the AC. Therefore, the court per Rowland, JCA held inter-alia: It is a trite law that the court will lift the veil of incorporation of any company to find out who was behind the fraudulent and improper conduct. This would be necessary where the canopy of legal entity is used to defeat public convenience, justify wrong and perpetuate fraud and crime. It goes without saying that this section applies only to where incorporation was used as a cloak to commit fraud. That is, where there was no intention to commit fraud or that the director acted in error or mistake of the facts, he will not be liable because equity will not allow an innocent man suffer fraud he never had intention of committing.

3.4 Protection of Minority: Once a company is incorporated under the relevant laws, it becomes a separate person from the individuals who are its

3.5 Reckless or Fraudulent Trading: If in the course of the winding up of a company, it appears that any business of the company has been carried on in a reckless manner or with intent to defraud creditors of the company or creditors of any other person for any fraudulent purpose, the court, on the application of the official receiver or the liquidator

[27] Section 290 CAMA, Mezu v. Co-operative & Commercial Bank (Nig) Plc. [2012] All FWLR PT. 655
[28] (1998) 3 N.W.L.R. (Pt 543) 602.

of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.[29] The court will lift the veil of incorporation of any company to find out who was behind the fraudulent and improper conduct of the company. This will be necessary where the canopy of legal entity is used to defeat public convenience, justifying wrong, perpetrate and protect fraud and crime or involved in reckless or fraudulent trading activities tainted with fraud.[30]

3.6 Company not mentioned on Bills of Exchange: Upon incorporation, every company shall have its names and registration number mentioned in legible characters in all business letters of the company and in all notices advertisements, and other official publication of the company and in all bills of exchange, promissory notes, endorsement, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all bills or parcels, invoices, receipts and letters of credit of the company. The fact that could be deduced from the foregoing above is that the Act (CAMA) seek to prevent fraud that may emanate from some company directors or managing director who may try to use the company to perpetuate fraudulent activities against a third party. The point is that if any officer of a company or any person on his behalf, issues or authorizes the issue of any bill of exchange, promissory note, endorsement, cheque or order for money or goods without the name of the company being so mentioned, he will be liable to the holder of any such bill of exchange and so forth for the amount thereof, unless it is duly paid by the company. An omission of an essential part of the name will be a contravention of the provision. Thus, the omission of the word 'limited' when it forms part of the company's name will come within the provision of the Act. In *Maxform SPA v. Marian and Goodwill*,[31] the court held that where an officer or a company signed a bill of exchange in which the company was described by a trade name, and the drawee and signatory were different, the circumstances were such that the signatory could be held to have signed on behalf of the drawee and was liable thereby.

[29] Section 506 (1) CAMA
[30] Adewumi v. Adebest Telecoms. (Nig) Ltd. [2013] All FWLR PT. 703. 1961
[31] (1982) 2 Lloyds Rep 54 CA.

3.7 Holding and Subsidiary Company: At the end of its financial year a company that has subsidiaries must prepare group financial statement dealing with the state of affairs and the profit and loss account of the company and the subsidiaries unless otherwise permitted by the Act.[32] Those documents must be laid before the company in its general meeting when the company's balance sheet and profit and loss account are so laid. In line with the above, the veil of incorporation may be pierced to discover the reality of the situation for instance, where a group of companies is virtually a partnership or where one of the companies is a trustee of the other in respect some property in use. The effect of such an account is to derogate from the independent legal personality of each of the companies and to show that they are related and are subject to examination behind the incorporation veil.

3.8 Investigation into related Companies: When an inspector is appointed by the Corporate Affairs Commission to investigate the affairs of a company, the inspector, if he thinks necessary for the purpose of his investigation, may also investigate the affairs of any other related company, and report on the affairs of other company so far as he thinks the result of his investigation thereof are relevant to his main investigation[33] and this provision is in consonance with the ratio of Denning L.J earlier Considered[34] in the case of *Norwest Holst v. Secretary of State For Trade*[35] where section **165** of the U.K. Companies Act was applied. It is apposite to submit that the Section was not meant to witch hunt but the court has the power to have such suits struck out. Hence, the court buttressed this assertion to ensure that the veil is unveiled for accountability in the face of economic realities.

4.0 CORPORATE VEIL UNDER ENGLISH SYSTEM

The Company Act[36] 2006 applicable in United Kingdom governs almost every activities of a company. It however did not provide for lifting the veil of incorporation. Instead, it makes

[32] Section 336-338 CAMA
[33] Section 316 CAMA
[34] Ibid at p. 8
[35] Supra
[36] Company Act 2006

the shareholders personally liable and also enlarge the scope of directors and other officers liable for their wrongful act.

The courts have, traditionally, the tendency of preserving the separate legal personality of companies especially after *Salomon v A Salomon & Co Ltd*[37], which had entrenched the limited liability principle for all companies, be it large or small. This tendency was consolidated by *Macaura v Northern Insurance Ltd.*[38] and *Lee v Lee's Air Farming*[39]. Thus, it can be seen that while lifting the veil the courts prefer to decide on basis of clear expression of statutes instead of interpreting the policy of the statute to do so. This fact is explained clearly by Lord Diplock in *Dimbleby & Sons Ltd v National Union of Journalists*[40]

> The 'corporate veil' in the case of companies incorporated under the Companies Acts is drawn by statute and it can be pierced by some other statute if such other statute so provides; but, in view of it's raison d'etre and its constant recognition by the courts since *Salomon v A Salomon & Co Ltd*, one would expect that any parliamentary intention to pierce the corporate veil would be expressed in clear and unequivocal language.

Kerhuel rightly cited the statement of Professor L Sealy that 'the courts have refused to "violate the sacred canon of limited liability", which means that still today, the courts do not lift the veil to impose personal liability on the shareholders for the debts of the company'.[41] 'What has plagued the English corporate veil doctrine and partly contributed to its lukewarm reception by the English courts is its lack of an overarching analytical framework.' Cheng, at the time of describing the history of the English corporate veil doctrine, states that '[t]he English corporate

[37] [1897] AC 619
[38] [1925] AC 619
[39] [1961] AC 12
[40] [1984] 1 WLR 427
[41] Corentin Kerhuel, 'The Corporate Personality and the Possibility to lift the Veil' (2009) < http: //www.Lega vox. fr/blog/corentin-kerhuel/corporate-personality-possibility-lift-veil-230.htm> accessed 5 August 2019.

veil doctrine has had a topsy-turvy career [and] [t]he attitude of the English courts has oscillated from enthusiastic embrace to outright hostility'.[42]

At Common Law

In judicial decisions based on neither a statute nor the terms of a contract, the doctrine of limited liability is challenged by more general arguments such as the single economic unit, the company being façade or sham, the agency argument, the interests of justice and impropriety[43]

While doing this, the court refused the *single economic unit* argument by indicating that it can only accept this argument if the wording of a particular statute or document justifies, because the general principle is that "each company in a group of companies… is a separate legal entity possessed of separate rights and liabilities". By contrast, in *DHN Food Distributors Ltd v Tower Hamlets London Borough Council*[44] the court held that the group of companies should be treated as a single economic entity and that compensation for disturbance of business should be paid to Bronze even though it was just the owner of the land but not the vehicles.

4.1 INSTANCES WHERE THE COURT WILL LIFT THE VEIL OF INCORPORATION

4.1.1 Fraud, Facade or Sham: Where an individual or a corporate body creates or runs a company to act as shield for fraudulent purposes or as a sham or facade to avoid existing obligation, the corporate veil will be lifted, if not ripped or rudely torn away. This position of the law recognized in Salomon's case has been reflected in a long list of authorities beginning from *Gilford Motor Co Ltd v. Horne*[45] to the more recent case of *Adams v. Cape Industries Plc*.[46] In this case, Horne, a former employee of the plaintiff company attempted to avoid a restrictive covenant claiming that as a person he might be bound by the restraint but the company being a separate entity may not be so bound. The

[42] Thomas Cheng, 'Piercing the Veil Across the Atlantic: A Comparative Study of the English and the U.S. Corporate Veil Doctrines'(2010) < http://works.bepress.com/cgi/viewcontent. cgi?article= 1002 & context =thomas_cheng > accessed 5 August 2019.
[43] P. Davies (ed.), *Gower & Davies: The Principles of Company Law*, 9th edn, (London: Sweet & Maxwell, 2008), para. 8-7, 8-14
[44] [1976] 1 WLR 852
[45] [1933] Ch 935
[46] [1990] 1 Ch 433

court described the company as a device, a stratagem and a mere cloak or sham in order to carry on the business of Mr E.B. Horne. The purpose of it was to try to enable him, under what is a cloak or sham, to engage in business which, on consideration of the agreement which had been sent to him just about seven days before the company was incorporated, was a business in respect of which he had a fear that the plaintiff might intervene and object. The court therefore cracked the corporate veil by granting an injunction against the company as well as Horne. This decision was followed in *Jones v. Lipman*,[47] where the defendant, who had contracted to sell land to the plaintiff, later endeavoured to put the land beyond the reach of an order for specific performance by conveying it to a company which he had formed for this express purpose, and which he effectively controlled by holding the majority shares. Ignoring the corporate veil, the court ordered specific performance against both the defendant and the company.[48]

4.1.2 Public Policy: Also, the courts are always ready to lift the veil of incorporation where such veil tends to be used as a shield contrary to public policy. Hence, in *Daimler Co. Ltd. v. Continental Tyre and Rubber Co. Ltd*,[49] in this case, there was a German Company. It set up a subsidiary company in Britain and entered into a contract with Continental Tyre and Rubber Co. (Great Britain) Ltd. for supply of tyres. During the time of war the British company is prohibited during that time. To find out whether the company was a German or a British company, the Court lifted the veil and found out tat since the decision making bodies, the board of directors and the general body of share holders were controlled by Germans, the company was a German company and not a British company and hence it was an enemy company.

4.1.3 Evasion of Taxes: The veil of incorporation will further be pierced when a company uses its legal personality to evade the payment of tax. According to Gowers,[50] each case where they have regarded the subsidiary as agent of the parent can be matched with another in which they have refused to do. He further posited that the cases revealed no consistent principle beyond a refusal by the legislature and judiciary to apply the logic of the

[47] (1962) 1 All ER 442; (1962) 1 WLR 832.
[48] Also see the Indian case of Subhra Mukherjee v. Bharat Coking Coal Ltd [2000] 101 Comp. Cas. 257 (SC), a private coal company sold its immovable
[49] (1916) A.C 307
[50] Supra

principle laid down in Salomon v Salomon and co ltd[51] where it is too flagrantly opposed to justice, convenience or interests of the revenue.

4.1.4 Illegality: Where the law will be employed as an instrument of fraud, the doctrine of corporate personality cannot be used to protect an illegal venture and this was the reasoning behind the decision in *Merchandise Transport ltd v. British Transport Commission.*[52]

4.1.5 Trust: Invariably, under the same guise, where a company is holding share in trust for third parties and the management of the company is in the hands of the trustees, the court may lift the veil of incorporation so as to appropriate the company's property with the terms of the trust. Hence, in *The Abbey, Malvern Wells ltd v. Ministry of Local Government and Planning*[53] Dankwerts J accepted the fact that a company held all its property on charitable trust when all the shares in it were so held and its article of association provided that the trustees were to be its governing body

5.0 CONCLUSION

Wherever the members of a company violates any statutory provisions or carry out any non-desirable activities under the guise of the corporate veil above the company, thereby misuse the privilege conferred to them, the courts are entitled to look beyond the veil, and this is known as lifting of corporate veil. But this is not a general rule and have to be applied only under exceptional circumstances. This leaves way for the instances under which the same could be done to be identified. Evolved through common law, the identified grounds are façade or sham, impropriety, single economic entity argument, evasion of taxes, avoidance of welfare legislation etc. It is worthy to note that what is important is the nature of the case. As it is an exceptional rule, the standard of scrutiny before its application is high. In conclusion, the test is whether the instances are crystal clear within statutes or whether the same are identified under the classical view or would fall within the same.

[51] Supra
[52] (1962) 2 Q.B 173
[53] (1951) Ch 728

There are Statutory provisions under the Companies and Allied Matters Act applicable in Nigeria geared at lifting the veil of incorporation of a company, this is not the case under the English law. The English court always feels reluctant to lift the veil of incorporation

Therefore, English courts should change their conservative approach. The doctrine of lifting corporate veil should adopted not merely in cases of fraud, agency case or for avoidance of legal obligation but also in all cases where it requires promoting the business activities. In this regard English judges may always bear in mind the pronouncement of an American Judge Sanborn. He stated ‘when the motion of legal entity is used to deter public convenience, justify wrong, protect fraud, or defend crime the law will regard the corporation as an association of persons.