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English courts address the potential convergence between the doctrines of piercing the corporate veil, party autonomy in jurisdiction agreements and privity of contract

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Legislation: [Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters \[2001\] OJ L012/1 art.23](#)

Cases: [Antonio Gramsci Shipping Corp v Stepanovs \[2011\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293 \(QBD \(Comm\)\)](#)

[Alliance Bank JSC v Aquanta Corp \[2011\] EWHC 3281 \(Comm\); \[2012\] 1 Lloyd's Rep. 181 \(QBD \(Comm\)\)](#)

[VTB Capital Plc v Nutritek International Corp \[2013\] UKSC 5; \[2013\] 2 A.C. 337 \(SC\)](#)

[Antonio Gramsci Shipping Corp v Reoletos Ltd \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157 \(CA \(Civ Div\)\)](#)

***J.B.L. 252 Introduction**

This article analyses how English courts very recently addressed the potential convergence between the significant doctrines of piercing the corporate veil, party autonomy in jurisdiction agreements and privity of contract. These three doctrines are significant because they constitute the lifeblood of international commercial transactions.

Piercing the corporate veil is a common law doctrine that is utilised to disregard the corporate personality rule,¹ in very rare or limited circumstances where a person or persons (the controller) under an existing legal obligation or restriction abuses the company's corporate structure by committing a grave or relevant impropriety, and it is necessary to grant the remedy because there is no other remedy available to the victim.² Piercing the corporate veil is regarded as a very limited or rare exception to the corporate personality rule, because the corporate personality rule is legally and economically fundamental to the business world—"limited companies have been the principal unit of commercial life for more than a century".³ Party autonomy in jurisdiction agreements in this article refers to the freedom of parties domiciled in Member States of the [Brussels I Regulation](#)⁴ to choose the court that decides their contractual disputes.⁵ The use of jurisdiction agreements is commonplace among international traders as the overwhelming majority of EU ***J.B.L. 253** companies also utilise it.⁶ Jurisdiction agreements aid legal certainty and enable the parties to foresee the court that has jurisdiction thereby reducing the risk of concurrent proceedings and associated litigation costs.⁷ The doctrine of privity of contract confers rights and obligations on only persons who are privy to an agreement.⁸ The doctrine of privity of contract is recognised as a fundamental aspect of English contract law⁹ as well as in other legal systems of Member States of the EU.¹⁰

In this respect, the issue that recently confronted English courts is whether the court can pierce the corporate veil of a company so as to recognise the controller of the company (who is not privy to the contract) as a party to the contract for the purpose of enforcing a part of the contract that gives exclusive jurisdiction to English courts. The law as it stands authoritatively in England resolves the issue in the negative.

The second part of this article provides a chronological background on the varied approaches taken by English courts on this issue. The third part of this article analyses the approach of the English Judges in reaching their decision. The fourth part of this article considers both its future implications on international commercial transactions and the policy reasons behind the decisions. The fifth part of

this article contains the conclusion.

Chronological background

The English court was first confronted with this issue in the case of [Antonio Gramsci Shipping Corp v Stepanovs](#).¹¹ In this case, the claimants alleged that Mr Stepanovs, Mr Lembergs¹² and others were involved in a fraudulent scheme to unjustly enrich themselves and deprive the claimant of huge profits by interposing their companies as charterers of some vessels at less than the market rate and then sub-chartering the vessels to another company at the market rate and keeping the difference. The charterparties contained a clause that vested exclusive jurisdiction in English courts. The claimants proceeded separately against Mr Stepanovs and got a worldwide freezing order of his assets on ex parte application to the court. The basis upon which the claimants sought English jurisdiction at the ex parte stage before Beatson J. and interlocutory proceedings before Burton J. was that the court should pierce the corporate veil to make Mr Stepanovs privy to the contract for the purpose of enforcing the exclusive jurisdiction clause in the contract because he abused the corporate structure of the companies that entered into the contract. In other words, he should be seen in the eyes of the law as being the **J.B.L. 254* original party to the contract that fraudulently procured the corporate defendants to enter into it.

Mr Stepanovs sought to challenge the jurisdiction of the court on the basis that it did not have jurisdiction under [art.23 of Brussels I](#) because he was not privy to the contract (and did not consent to it) which the corporate defendants (he was alleged to control) entered into. Burton J. rejected the argument and, concurring with the obiter views of Beatson J. at the ex parte stage of the case,¹³ held that this was a case where the court should justifiably pierce the corporate veil and make him privy to the contract by treating the companies' acts as his acts from the outset, for the purpose of establishing jurisdiction in English courts under [art.23 of Brussels I](#).¹⁴ Burton J. also held that Mr Stepanovs was also to be regarded as having consented to the jurisdiction agreement as a matter of EU law under [art.23](#).¹⁵ Burton J.'s decision was not challenged.

In [Linsen International Ltd v Humpuss Sea Transport PTE Ltd](#),¹⁶ Flaux J. was confronted (on different facts and circumstances)¹⁷ with the opportunity to make an observation on the correctness of the decision in the [Stepanovs](#) case. Flaux J. distinguished and justified Burton J.'s decision, which pierced the corporate veil to establish English jurisdiction under [art.23 of Brussels I](#) on the basis that in the [Stepanovs](#) case:

"The whole purpose of the corporate structure was to perpetrate the relevant fraud from the outset and both the chartering companies and the charterparties themselves were effectively a sham or façade from the outset."¹⁸

The High Court before Arnold J. was again confronted with this issue in the case of [VTB Capital Plc v Nutritek International Corp](#).¹⁹ In this case, the claimants sought to amend their particulars of claim and sought to pierce the corporate veil in order to hold the corporate defendants and Mr Malofeev jointly and severally liable with another corporate defendant (RAP) for unlawful misrepresentation in inducing the claimant to avail the corporate defendant a loan facility. The purpose of the claimant's case was to establish English jurisdiction under [art.23 of Brussels I](#) (as provided in the loan facility agreement with RAP) against the Mr Malofeev and the other corporate defendants (who were not privy to the loan facility agreement) for abusing the corporate structure of RAP and making unlawful misrepresentations about RAP in inducing the claimant to enter into the contract. Arnold J. dismissed the claimant's case and held that the decision in [Stepanovs](#) was wrongly decided insofar as it held that the corporate veil can be pierced for **J.B.L. 255* the purpose of holding a party who is not privy to a contract liable under the contract to establish jurisdiction under [art.23 of Brussels I](#).²⁰ Arnold J., however, held that, assuming he was wrong and Burton J. was right as a matter of English law with respect to identifying the defendants as parties to the contract through the doctrine of piercing the corporate veil to establish English jurisdiction under [art.23](#), then the defendants should be regarded as having consented to the jurisdiction clause as a matter of EU law under [art.23](#).²¹

Arnold J.'s decision also came (for consideration) before Burton J. in [Alliance Bank JSC v Aquanta Corp](#).²² In this case the corporate claimant alleged that the sixth to eighth defendants (and other defendants) were part of a fraudulent scheme to obtain a loan from two banks (the lenders) in the significant sum of about US\$1.1 billion dollars, and with their influence and position as controllers of the claimant's company, made the corporate claimant the guarantor under the loan agreement by causing the claimant to acquire US Treasury Notes (also called STRIPS) in the total value of US\$1.1

billion dollars to secure the transaction. The claimant alleged that the sixth to eighth defendants conspired to set up corporate offshore companies in jurisdictions with less inspection and regulation for the very fraudulent purpose of acquiring the loan from the lenders, which they never had any intention of paying back. The claimant was made to fulfil the obligation of the corporate offshore companies allegedly created by the sixth to eighth defendants, when the corporate offshore companies were in default under the loan agreement with the lenders. The claimant sought to amend its particulars of claim to bring a claim (for service of writ out of jurisdiction) in subrogation against the sixth to eighth defendants as parties to the loan agreement (they were not privy to) and the exclusive jurisdiction agreement contained therein. The claimant at the interlocutory stage relied on the doctrine of piercing the veil to hold the sixth to eighth defendants as parties to the loan agreement for the purpose of establishing the existence and exercise of English jurisdiction against them. Burton J. referred to his decision in *Stepanovs* and observed that although Flaux J. in *Linsen International* did not doubt his decision in *Stepanovs*, Arnold J. in *VTB* had declined to follow that decision. Burton J. opted to follow his decision in *Stepanovs* without providing reasons as to why he thought Arnold J. was wrong.²³

The decision in the *VTB* case was appealed against and for the first time the English Court of Appeal²⁴ had to pronounce on the vexed issue confronting the High Court. Arnold J.'s decision was affirmed and Burton J.'s decision on the issue was overruled as wrongly decided.²⁵ The English Court of Appeal in a reasoned judgment came to the conclusion that using the doctrine of piercing the corporate veil to make a person who is not privy to a contract to become bound by it in order to establish jurisdiction under [art.23 of Brussels I](#) is not a cause of action known to English law and did not feel there was good justification to stretch the exceptions to the established principles of corporate legal personality and privity of contract.²⁶ The English Court of Appeal's decision in *VTB* was significant ***J.B.L. 256** in promptly resolving the issue in at least two other similar cases. First, counsel to the claimant/respondents (on appeal) in *Alliance Bank JSC* on the second day of the hearing of the matter (before the Court of Appeal) in the light of the decision of the Court of Appeal's decision in *VTB* abandoned the contractual route to establishing exclusive English jurisdiction (through the piercing of the corporate veil) against the sixth to eighth defendants/appellants.²⁷ Secondly, when the issue which came before the Court of Appeal in *VTB* simultaneously came before Teare J. in *Antonio Gramsci Shipping Corp v Lembergs*,²⁸ Teare J., recognising that this was a vexed issue, awaited the Court of Appeal's decision in *VTB*. Teare J. as a matter of judicial precedent was bound to follow the Court of Appeal's decision in *VTB*.²⁹

The claimants dissatisfied with the Court of Appeal's decision in *VTB* appealed to the UK Supreme Court. The UK Supreme Court affirmed the Court of Appeal's decision. The UK Supreme Court was called upon to pronounce on whether the doctrine of piercing the corporate veil did exist. Although the UK Supreme Court refrained from making a pronouncement on whether the doctrine of piercing the corporate veil did exist,³⁰ it held that, assuming the doctrine did exist, English law did not recognise it as making a party who is not privy to a contract to become bound by it as a consequence of the operation of the doctrine, and there was no principled justification to expand the law.³¹ Fortunately, another UK Supreme Court very recently considered the operation of the doctrine of piercing the corporate veil. The majority³² reached some consensus³³ that the doctrine did exist and was to be used in necessary and limited circumstances where no other remedy was available to the victim that alleges the corporate structure has been abused through some impropriety by some person "under an existing legal obligation or liability or subject to an existing legal restriction ...".³⁴ The decision confirmed ***J.B.L. 257** the UK Supreme Court's decision in *VTB* that the doctrine of piercing the corporate veil cannot be used to get around the doctrine of privity of contract in order to bind a party to a jurisdiction agreement under [art.23 of Brussels I](#) because it is not an abuse of the corporate structure to rely on the doctrine of privity of contract to avoid the controller being held liable for the acts of the company.³⁵

Thus, when the issue came recently before the Court of Appeal in *Lembergs*,³⁶ the claimants abandoned the contractual route to establishing jurisdiction under [art.23 of Brussels I](#). The claimants advanced the view that under EU law the court could pierce the corporate veil to find a party who controls a company and abuses its corporate structure as deemed to have consented to the jurisdiction agreement under [art.23](#) despite his not being a party to the agreement as a matter of national law. The Court of Appeal dismissed the case of the claimants as being unknown to EU law, as could be deciphered from the Court of Justice of European Union (CJEU) cases that required real consent that is clearly and precisely demonstrated to establish jurisdiction under [art.23](#).³⁷ It further ruled that the only cases where third parties have been held bound by jurisdiction agreements as could be deciphered from the CJEU authorities was in cases of transfer of all rights and obligations

under the contract to the third party.³⁸ This was not the position in this case.

Analysing the approach of the English judges on the issue

There was a consensus among English judges that English law governs the identity of parties to the jurisdiction agreement, while [art.23 of Brussels I](#) governs the issue of consent.³⁹ There are, however, two other sub-issues which require further consideration. The first sub-issue is the use of the analogy of the relationship between agent and principal (or undisclosed principal) as a basis for advancing the view that the court can pierce the corporate veil to hold a party who is not privy to a contract as bound by the contract and jurisdiction agreement contained therein. The second sub-issue considers the possibility that the corporate veil can be pierced to establish jurisdiction against the controller on the basis that the controller was deemed to have consented to the agreement.

The first sub-issue is important because it (the analogy) provided foundation for the view that the corporate veil could be pierced to get around the doctrine of privity of contract in establishing exclusive jurisdiction. This analogy was inspired by the decision of Cooke J. in [Standard Steamship Owners P & I Association v GIE Vision Bail](#),⁴⁰ where he held that "if the agent specifically agrees a jurisdiction *J.B.L. 258 clause, and it is within his actual or ostensible authority to do so, that ought to bind the principal. The agent stands in the shoes of the principal".⁴¹ The decision of Cooke J. in [Standard Steamship](#) probably influenced Beatson J. in [Stepanovs](#) at the ex parte stage to express the view that:

"Where there is a good arguable case that the requirements for piercing the corporate veil have been satisfied and the Defendant is the alter ego, or one of the alter egos of the Corporate Defendants, there is also a good arguable case that he should be regarded as stepping into their shoes so that the acts of the Corporate Defendants are seen as his acts ... to be seen as agreeing to the jurisdiction of the court by reason of the jurisdiction agreement ... in a manner which satisfies the requirement of [Article 23](#)." ⁴²

The same judgment of Cooke J. certainly influenced Burton J. to express the view that there is "no good reason of principle or jurisprudence why the victim cannot enforce the agreement against the puppet company and the puppet who, all the time, was pulling the strings".⁴³ In [Alliance Bank JSC](#),⁴⁴ he reaffirmed his view that:

"The question of whether the veil should be pierced in such a situation, so as to decide whether the puppeteers are parties to the contract, is to be resolved, just as would be issues of agency, undisclosed or otherwise" ⁴⁵

The Court of Appeal and UK Supreme Court in [VTB](#) explained why this analogy was misplaced. First, the law relating to undisclosed principals and agents was recognised as anomalous because it runs counter to the fundamental principles of privity of contract.⁴⁶ Thus, the doctrine of piercing the corporate veil had to be considered independently except if it would be unjust and unprincipled not to extend the anomaly.⁴⁷ Secondly, while English law recognised the identity of the principal as a party to the jurisdiction agreement entered into by the agent because the agent was authorised to do so by the principal (or undisclosed principal), the same relationship could not be attributed to relationship between the controller of the company and the company.⁴⁸

The second sub-issue is important because the doctrine of abuse of rights (which is similar to the doctrine of piercing the corporate veil) is recognised in other *J.B.L. 259 Member States that operate the civil law system.⁴⁹ If some English judges at the lower court decided or expressed the view that the corporate veil could be pierced in order to get around the doctrine of privity of contract and provide requisite consent for establishing jurisdiction under [art.23](#), there is a reasonable chance that if this issue comes before other Member State countries, they may be attracted to the view that the doctrine of abuse of rights can be used as a basis of getting around the principle of privity of contract and provide requisite consent for establishing exclusive jurisdiction.

The author is of the view that assuming civil law countries are attracted to the view that the doctrine of abuse of rights can be used to get around the doctrine of privity of contract to establish the identity of the parties under [art.23](#), it will be erroneous to regard the third party as having agreed or really consenting to jurisdiction clearly and precisely as a matter of EU law because the third party did not intend to be a party to the contract.⁵⁰ To state it more clearly, assuming the UK Supreme Court had ruled that English law recognised the use of the doctrine of piercing the veil to get around the doctrine of privity of contract in order to establish the identity of the parties to the jurisdiction agreement, it

would be wrong to regard the controller or third party as having consented to the agreement as a matter of EU law under [art.23](#).⁵¹ Therefore, the author respectfully regards the views expressed by some English judges to the contrary as no longer representing good law.⁵² Furthermore, the author also agrees with the Court of Appeal (per Beatson L.J.) in the [Lemberg](#) that the only recognised case at the moment in which a third party who is originally not privy to a contract can become privy to a legal relationship in a jurisdiction agreement and regarded as having consented to it is in cases of transfer of all rights and obligations under the contract to the third party. ***J.B.L. 260**⁵³

Implications and policy considerations

The implication of the decisions of the English courts on this issue means that where a controller sets up a company for the very fraudulent purpose of inducing a party to enter into a transaction to which the controller is not privy, the victim cannot rely upon the jurisdiction of the English courts to pierce the corporate veil to hold the controller as a party to the contract, and also use it as a basis to establish jurisdiction under [art.23](#). On the face of it, it may be said the English approach has at least two troubling consequences for an international trader. First, the English approach lends weight to commercial fraud. Secondly, it also leads to a multiplicity of judicial proceedings and an increase in litigation costs if the victim cannot claim benefit of the exclusive jurisdiction clause that he is ordinarily not privy to through the doctrine of piercing the corporate veil.⁵⁴

Fortunately, the English courts were alive to these policy considerations and provided some response. On the first policy consideration, the approach taken by the English courts can be justified as preserving the traditional doctrines of corporate legal personality and privity of contract. These legal doctrines as stated above form a core aspect of the commercial life of the business world. At least three observations can be deduced as to why English courts adopted its approach on the first policy consideration. First, disregarding the corporate legal personality rule in order to get a controller who is not a party to a contract to become bound by it had never been known to English law or invoked until the decision in the [Stepanovs](#) case. Arnold J., with whom the Court of Appeal and UK Supreme Court agreed, regarded the approach in the [Stepanovs](#) case as another way of avoiding the doctrine of privity of contract.⁵⁵ The Court of Appeal Justices and UK Supreme Court Justices who agreed with Arnold J. found no principled justification for extending the law to permit piercing the corporate veil in order to get around the doctrine of privity of contract.⁵⁶ The use of the doctrine of piercing the corporate veil to get around the doctrine of privity of contract as a basis to found English jurisdiction under [art.23](#) was not good justification.⁵⁷ Secondly, the view was expressed that extending the law to recognise the doctrine of piercing the corporate veil as a basis to get around the doctrine of privity of contract may create legal uncertainty such as where the third party who is claimed to be liable under the contract seeks to enforce some of its provisions by way of set off or cross-claim in defence to an action by the victim.⁵⁸ Thirdly, English law provided adequate remedies against a person who is not privy to contract in cases of commercial fraud in the tort of deceit or fraudulent misrepresentation,⁵⁹ unjust enrichment, principles of equity (such as injunctive remedies and specific performance), the law of trusts and other statutory remedies. ***J.B.L. 261**

The answer to the second policy consideration as a matter of EU law can be justified on at least on two grounds. First, for jurisdiction to be highly predictable it is generally founded on the defendant's domicile and it is only to be derogated from in special circumstances such as recognising party autonomy in jurisdiction agreement.⁶⁰ Therefore, the use of the doctrine of piercing the corporate veil to bind a stranger to a contract and the jurisdiction clause contained therein does not justify derogating from establishing jurisdiction at the defendant's domicile, because the stranger did not consent or intend to be bound by the contract and the jurisdiction clause contained therein.⁶¹ Secondly, it would amount to infringing the right of a defendant (who is not privy to a contract) to have full access to justice if the court imposes a jurisdiction agreement the defendant never consented to or intended to be bound by.⁶²

Conclusion

A convergence would have been created between the doctrines of piercing the corporate veil, party autonomy in jurisdiction agreement and privity of contract if the Court of Appeal and UK Supreme Court favoured the decision of Burton J. in [Stepanovs](#) and [Alliance Bank JSC](#). In other words, it would have led to the recognition of the doctrine of piercing the corporate veil as a device that gets around the doctrine of privity of contract as a basis for establishing jurisdiction under [art.23 of Brussels I](#).

The decision(s) to reject that convergence reflects the varied policy choices between extending the doctrine of piercing the corporate veil to avoid the doctrine of privity of contract in a bid to establish jurisdiction under [art.23](#), thereby tackling commercial fraud and reducing the problems of multiplicity of judicial proceedings and associated litigation cost; and on the other hand preserving the traditional rules of corporate legal personality, privity of contract, and clear and precise consent in jurisdiction agreements in order to enhance international commercial transactions in the business world, and ensure that strangers to a contract are not bound by the jurisdiction clauses contained therein.

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1. The corporate personality rule regards a company as a legal entity with rights and obligations that are distinct from its shareholders and directors. The rule was created in [Salomon v Salomon & Co Ltd \[1897\] A.C. 22 HL](#).
 2. [Prest v Petrodel Resources Ltd \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [16], [27]–[35] per Lord Sumption; [80]–[83] per Lord Neuberger; [91]–[92] per Lady Hale; [98]–[102] per Lord Mance; [103] per Lord Clarke. See also [VTB Capital Plc v Nutritek International Corp \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [128] per Lord Neuberger; [Woolfsong v Strathclyde RC 1978 S.L.T. \(H.L.\) 159 HL](#) at 161 per Lord Keith; [Ben Hashem v Ali Shayif \[2008\] EWHC 2380 \(Fam\); \[2009\] 1 F.L.R. 115](#) at [159]–[164] per Munby J.
 3. [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [8] per Lord Sumption.
 4. [Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters \[2001\] OJ L12/1](#) (Brussels I).
 5. [Brussels I art.23](#).
 6. Opinion of A.G Jaaskinen at [2], [24] in [Refcomp SpA v Axa Corporate Solutions Assurance SA \(C-543/10\) \[2013\] I.L.Pr. 17](#). A.G Jaaskinen also quoted the *Commission working document of December 14, 2010 entitled "Accompanying Document to the Proposal for a Regulation Concerning the Recast of Regulation 44/2001" SEC(2010) 1548 final, para.2.3.1*, which states that "the overwhelming majority of EU business in cross-border trade make use of choice-of-court-agreements (almost 70% of all companies and 90% of large companies)".
 7. [Recital 11](#) and [15 to Brussels I](#); [Powell Duffryn Plc v Petereit \(C-214/89\) \[1992\] E.C.R. I-1745; \[1992\] I.L.Pr. 300](#) at [13]–[14], [16]–[18], [20].
 8. [Dunlop Pneumatic Tyre Co v Selfridge Co \[1915\] A.C 847 HL](#) at 852 per Viscount Haldane L.C.
 9. [Dunlop v Selfridge \[1915\] A.C 847](#) at 852.
 10. [Refcomp SpA v Axa \[2013\] I.L.Pr. 17](#) at [16].
 11. [Antonio Gramsci Shipping Corp v Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#).
 12. Mr Lembergs was sued separately on the same facts and cause of action in another case considered in this article—[Antonio Gramsci Shipping Corp v Lembergs \[2012\] EWHC 1877 \(Comm\); \[2012\] 2 Lloyd's Rep. 365](#).
 13. [Stepanovs, Ex p. application November 17, 2010](#) at [36], cited in [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [6].
 14. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [26]–[27], [60]–[61]. Burton J., however, stated that as a matter of public policy the controller cannot enforce the contract.
 15. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [60]–[61].
 16. [Linsen International Ltd v Humpuss Sea Transport Pte Ltd \[2011\] EWHC 2339 \(Comm\); \[2012\] Bus. L.R. 1649](#).
 17. In this case the claimant sued the first defendant for refusing to pay for chartering services provided. The first defendant as part of a restructuring transferred its assets to other companies, which were the third to thirteenth defendants in this case. The claimant got an arbitral award against the first defendant and sought to pierce the veil against the third to thirteenth defendants and enforce the award against them.
 18. [Linsen v Humpuss \[2011\] EWHC 2339 \(Comm\); \[2012\] Bus. L.R. 1649](#) at [139]. Flaux J. regarded the transaction in this case as a genuine one and refused to pierce the veil. The Court of Appeal also dismissed the case: [Linsen International](#)

- [Ltd v Humpuss Sea Transport Pte Ltd \[2011\] EWCA 1042](#). The correctness of Burton J.'s decision in [Stepanovs](#) was not specifically considered by the Court of Appeal in this case.
19. [VTB Capital Plc v Nutritek International Corp \[2011\] EWHC 3107 \(Ch\)](#).
 20. [VTB Capital v Nutritek \[2011\] EWHC 3107 \(Ch\)](#) at [97]–[102].
 21. [VTB Capital v Nutritek \[2011\] EWHC 3107 \(Ch\)](#) at [109]–[110].
 22. [Alliance Bank JSC v Aquanta Corp \[2011\] EWHC 3281 \(Comm\); \[2012\] 1 Lloyd's Rep. 181](#).
 23. [Alliance Bank JSC \[2011\] EWHC 3281 \(Comm\); \[2012\] 1 Lloyd's Rep. 181](#) at [20].
 24. [VTB Capital Plc v Nutritek International Corp \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#).
 25. [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [61], [73], [88]–[96] per Lloyd L.J.
 26. [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [61], [73], [88]–[96].
 27. [Alliance Bank JSC \[2012\] EWCA Civ 1588; \[2013\] 1 All E.R. \(Comm\) 819](#) at [32].
 28. [Lembergs \[2012\] EWHC 1877 \(Comm\); \[2012\] 2 Lloyd's Rep. 365](#).
 29. [Lembergs \[2012\] EWHC 1877 \(Comm\); \[2012\] 2 Lloyd's Rep. 365](#) at [55].
 30. [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [130] per Lord Neuberger; [158] per Lord Wilson; [238] per Lord Clarke; [243] per Lord Reed. See also [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [26] per Lord Sumption.
 31. [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [132]–[148] per Lord Neuberger.
 32. [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [27]–[35] per Lord Sumption; [80]–[83] per Lord Neuberger; [91]–[92] per Lady Hale; [98]–[102] per Lord Mance; [103] per Lord Clarke. Lord Walker dissented at [105]. Lord Walker denied the existence of any such doctrine as piercing the corporate veil "in the sense of a coherent principle or rule of law". He regarded the doctrine as a label used indiscriminately in cases where the court was actually invoking "a statutory provision, joint liability in tort, unjust enrichment, or from principles of equity and the law of trusts". He concluded that "no clear example had yet been identified" in which the doctrine operated independently.
 33. [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#). There were some aspects of the leading judgment of Lord Sumption's decision that was not accepted by the other Justices, who concurred with him in other respects on the operation of the doctrine of piercing the corporate veil. For example Lord Sumption at [28] to [35] of his leading judgment propounded the theory that the doctrine of piercing the corporate veil lay in what he called the "concealment and evasion principle". Lord Neuberger at [60] and [81] accepted the views of Lord Sumption on the concealment and evasion principle but qualified his agreement with the view on the basis that it was not to be equated (or go beyond) with an independent concept of "fraud unravels everything"—it should be left to the legislature to address such matters. Lady Hale at [90] was unsure if she could categorise the doctrine of piercing the veil neatly under the evasion and concealment principle. Lord Mance at [100] and [102] was of the view that it would be dangerous to foreclose possible future situations in which the doctrine operates to the evasion and concealment principle. Lord Clarke agreed with Lord Mance at [103] in this regard. Lord Clarke added that the concealment and evasion principle should not be accepted until the court hears argument of counsel.
 34. [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [35] per Lord Sumption. If this is the conclusion to be derived from the majority decision of the Supreme Court Justices in the [Prest](#) case, it raises the question whether the doctrine does exist or operates independently. A discussion on how the doctrine operates independently from other remedies available in law is surely beyond the scope of this article, but it would prove to be useful to future judicial and academic discussions on the operation of the doctrine of piercing the corporate veil. The author is of the view that the creation of an incoherent and imprecise doctrine of piercing the veil can at best be rationalised as preserving the traditional rule of corporate legal personality.
 35. [Prest v Petrodel \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [24].
 36. [Antonio Gramsci Shipping Corp v Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#).
 37. [Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [51]–[62].
 38. [Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [62]. See also [Refcomp SpA v Axa \[2013\] I.L.Pr. 17](#) at [25]–[30].
 39. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [44]–[46], [61]–[62] per Burton J.; [VTB Capital \[2011\] EWHC 3107 \(Ch\)](#) at [103]–[108] per Arnold J.; [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [51] per Lloyd L.J.; [Antonio Gramsci v Lembergs \[2012\] EWHC 1877 \(Comm\); \[2012\] 2 Lloyd's Rep. 365](#) per Teare J.; [Antonio Gramsci Shipping v Stepanovs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [49], [64] per Beatson L.J.
 40. [Standard Steamship Owners P & I Association v GIE Vision Bail \[2005\] 1 All E.R. \(Comm\) 618; \[2005\] 2 C.L.C. 1135](#) at [53]–[54].

41. [Standard Steamship Owners \[2005\] 1 All E.R. \(Comm\) 618; \[2005\] 2 C.L.C. 1135](#) at [53]–[54].
42. [Stepanovs, Ex p. application November 17, 2010](#) at [36] cited in [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [6].
43. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [26].
44. [Alliance Bank JSC \[2011\] EWHC 3281 \(Comm\); \[2012\] 1 Lloyd's Rep. 181](#).
45. [Alliance Bank JSC \[2011\] EWHC 3281 \(Comm\); \[2012\] 1 Lloyd's Rep. 181](#) at [20].
46. [Siu Yin Kwan \(Administratrix of the estate of Chan Ying Lung, decd\) v Eastern Insurance Co Ltd \[1994\] 2 A.C. 199 PC \(Hong Kong\)](#) at 207 per Lord Lloyd; [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [89] per Lloyd L.J.; [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [141] per Lord Neuberger; [Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [60] per Beatson L.J. See also [OBG Ltd v Allen \[2008\] 1 A.C. 1 HL](#) at [103] and [106] per Lord Hoffmann. The relationship between principal and agent was actually recognised by the House of Lords (per Viscount Haldane L.C.) in [Dunlop v Selfridge \[1915\] A.C. 847](#) at 852 as one of the exceptions to the principle of privity of contract.
47. [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [132]–[148] per Lord Neuberger.
48. [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [89] per Lloyd L.J.; [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [138] per Lord Neuberger; [Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [58]–[59].
49. See *In Re Barcelona Traction, Light and Power Ltd [1970] I.C.J. 3*. See also [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [89] per Lloyd L.J.; [Prest \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [17] per Lord Sumption; [68] per Lord Neuberger.
50. This view is supported by the recent CJEU decision in [Refcomp SpA v Axa \[2013\] I.L.Pr. 17](#) at [25]–[30]. The CJEU in this case recognised that there were national legal systems in Member States that recognised the right of a sub-buyer (the third party) to claim against the original manufacturer for breach of contract regarding the quality of a product, as an exception to the doctrine of privity of contract. However, the CJEU refused to leave it to national law to determine the identity of the parties to such a legal relationship for the purpose of establishing if there was consent as a matter of EU law to the jurisdiction clause. The CJEU ruled that except the rights and obligations are transferred to the third party under the contract as in the case of a bill of lading (where the contractual relationship between the carrier and shipper is transferred to a third-party bearer of conferring jurisdiction in the bill of lading), the third party was not to be regarded as having consented to a jurisdiction clause. See also *Estatiss Salotti v RUWA Polstereimaschinen GmbH (24/76) [1976] E.C.R. 1831; [1977] 1 C.M.L.R. 345*; [Galleries Segoura SPRL v Rahim Bonakdarain \(25/76\) \[1976\] E.C.R. 1851; \[1977\] 1 C.M.L.R. 361](#); [Mainschiffahrts Genossenschaft eG \(MSG\) v Les Gravières Rhénanes Sàrl \[1997\] I.L.Pr. 411 Bundesgerichtshof \(Germany\)](#).
51. Although the Court of Appeal and UK Supreme Court did not dwell on the EU point of consent, they correctly stated that a contract is a consensual arrangement between parties who intend to be bound by it. Thus, a controller of a company cannot be said to have consented to a contract he was not privy to or intended to be bound by. See [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [90] per Lloyd L.J.; [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [140] per Lord Neuberger; [Prest \[2013\] UKSC 34; \[2013\] 2 A.C. 415](#) at [34] per Lord Sumption. By way of comparison, Nigerian law also does not bind parties to a jurisdiction agreement if they are not privy to the contract that contains the jurisdiction agreement—*Unipetrol Nigeria Ltd v Prima Alfa Enterprises (Nigeria) Ltd [1986] 5 N.W.L.R. 532*.
52. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [61]–[63] per Burton J.; [VTB Capital \[2011\] EWHC 3107 \(Ch\)](#) at [110] per Arnold J.
53. [Stepanovs \[2010\] EWHC 333 \(Comm\); \[2012\] 1 All E.R. \(Comm\) 293](#) at [62]. This applies to contracts of bill of lading: *Tilly Russ v Haven (71/83) [1984] E.C.R. 2417; [1984] 3 C.M.L.R. 499* at [24]–[27]; [Trasporti Castelletti Spedizioni Internazionali SpA v Hugo Trumpy SA \(C-159/97\) \[1999\] E.C.R. I-1597; \[1999\] I.L.Pr. 492](#) at [41]; [Coreck BV Maritime GmbH v Handelsvee \(C-387/98\) \[2000\] E.C.R. I-9337; \[2001\] I.L.Pr. 39](#) at [23]–[27]. The same position also applies in cases of principal (or undisclosed principal) and agent because the principal effectively transfers his powers to his agent to act on his behalf and bind him. In other words, "the agent stands in the shoes of the principal": Cooke J. in [Standard Steamship Owners \[2005\] 1 All E.R. \(Comm\) 618; \[2005\] 2 C.L.C. 1135](#) at [53].
54. These policy considerations were emphasised by the claimants when they made a plea that the issue be referred to the CJEU for a preliminary ruling under art.267 of the Treaty of the Functioning of the European Union (TFEU). The plea was not granted.
55. [VTB Capital \[2011\] EWHC 3107 \(Ch\)](#) at [101] per Arnold J.
56. [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [61], [73], [88]–[96] per Lloyd L.J.; [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [132]–[148] per Lord Neuberger.
57. [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C. 337](#) at [146] per Lord Neuberger.
58. [VTB Capital \[2011\] EWHC 3107 \(Ch\)](#) at [101] per Arnold J.
59. [VTB Capital \[2012\] EWCA Civ 808; \[2012\] 2 Lloyd's Rep. 313](#) at [95] per Lloyd L.J.; [VTB Capital \[2013\] UKSC 5; \[2013\] 2 A.C.](#) at [139] and [146] per Lord Neuberger.

60. [Brussels I art.2](#). See also [Recital 11](#) and [15 to Brussels I](#). The CJEU decisions in [Estativ Salotti \[1976\] E.C.R. 1831: \[1977\] 1 C.M.L.R. 345](#) at [7]; [Castelletti \[1999\] E.C.R. I-1597; \[1999\] I.L.Pr. 492](#) at [48]–[49].
61. [Lembergs \[2013\] EWCA Civ 730; \[2013\] 4 All E.R. 157](#) at [51]–[52] per Beatson L.J.
62. Opinion of A.G Jaaskinen in [Refcomp SpA v Axa \[2013\] I.L.Pr. 17](#) at [38].

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