



Jurnal Bina
Mulia Hukum

Contents lists available at [Sinta 2](#)

JURNAL BINA MULIA HUKUM

Publisher by Faculty of Law, Universitas Padjadjaran

<https://jurnal.fh.unpad.ac.id/index.php/jbmh>



Business Judgment Rules in Bankruptcy Cases and the Never-Ending Cycle of Judgment

Fajar Sugianto ^{a*}; Astrid Athina Indradewi ^b; Shintaro Tokuyama ^c

^a Faculty of Law, Universitas Pelita Harapan, Tangerang, Indonesia.

^b Faculty of Law, Universitas Airlangga, Surabaya, Indonesia.

^c Ray of Light Incorporation, Tokyo, Japan.

*Corresponding Author: fajar.sugianto@uph.edu

ARTICLE INFO

Volume 11, Number 1,
September 2026 (260-279)
DOI: <https://doi.org/10.24198/jbmh.v11n1.2587>
P-ISSN: 2528-7273
E-ISSN: 2540-9034

Article History:

Submitted: 05/12/2025

Revised: 11/06/2026

Accepted: 14/10/2026

Published: 18/10/2026

Plagiarism Report: 5%

AI Written: 3%

Keywords: *bankruptcy; business judgement rules; company law; limited liability.*

ABSTRACT

The Business Judgment Rule (BJR) serves as a legal doctrine that protects corporate directors from personal liability for business decisions made in good faith, with due care, and in the best interests of the company. Nevertheless, the scope of such protection remains uncertain, particularly when a company enters bankruptcy proceedings and management decisions are alleged to have contributed to the company's financial failure. Although Indonesian law recognizes both directors' liability and the BJR under the Limited Liability Company Law, its application in bankruptcy-related disputes remains limited and inconsistent, resulting in legal uncertainty regarding the circumstances under which directors may still invoke BJR protection. This study aims to examine the limitations of the BJR in bankruptcy contexts and to identify the conditions under which the doctrine ceases to protect corporate management. The research employs a normative legal method through doctrinal analysis of statutory regulations, court decisions, and legal commentaries from Indonesia and selected comparative jurisdictions. The findings indicate that the principal limitation of the BJR lies in the legality of the management decision itself. Courts generally uphold BJR protection when directors act in good faith, exercise due care, and pursue the company's interests within the boundaries of the law. However, where a decision involves a violation of legal norms, BJR protection is no longer available, even if the decision was intended to benefit the company. Accordingly, the legality requirement functions as a fundamental threshold for the application of the BJR, including in bankruptcy proceedings. This study contributes to the development of a more coherent doctrinal framework for determining directors' liability in bankruptcy cases and clarifying the legal boundaries of BJR protection in Indonesia.

INTRODUCTION

In accordance with Article 1 Number 1 of the Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the "Bankruptcy Law"), the concept of bankruptcy has been defined as the legal process of seizing all assets belonging to a specific debtor who has been declared bankrupt. The process involves the appointment of a Curator to administer and settle the debtor's estate under the supervision of a supervisory judge. The elements include: (1) bankruptcy as a general confiscation; (2) confiscation of the debtor's assets; and (3) administration by a curator under judicial supervision.

These elements indicate that the debtor loses the right to manage their assets, which are confiscated to satisfy creditor claims. In the context of bankruptcy proceedings, creditors can be divided into three categories:¹ (1) Secured Creditor: these creditors are individuals whose debts are secured due to security (mortgage, pawn, fiduciary security); (2) Preferential Creditor: Preferential creditors are legally regulated individuals. Preferential creditors can be classified as special or general. Payments to special preferential creditors have priority over general preferential creditors; (3) Unsecured Creditor: these creditors are referred to as unsecured due to not having specific unsecured security. They also do not have the same privileges of preferential creditors. Payments made to unsecured creditors are made according to the size of the receivables of each existing creditor.

Bankruptcy is frequently an unavoidable situation for financially struggling businesses, either as a means of paying off debts or as a means of protecting creditors; especially in cases where those businesses have been operating below expectations, have lost market share, and are now just trying to make it through a constantly shifting and dynamic economic environment,² bankruptcy often serves as a viable option for financially distressed companies. Bankruptcy, nonetheless, possesses adverse implications. Today, limited liability applies to the vast majority of legal entities. In instances of limited liability company bankruptcy, Landers asserts that the primary purpose is often to shift the burden of failure from the company's shareholders or board of directors to the creditors,³ particularly those who are involuntary creditors.⁴ Hence, if a company fails to pay its debts to the creditors, the liability remains limited to the assets of the company and is not correlated with the personal assets of the company organs.

The legal consequences of bankruptcy are addressed in Law Number 40 of 2007 on Limited Liability Companies (UU PT). Article 3(2) provides exceptions to limited liability where: (a) the company has not fulfilled legal entity requirements; (b) shareholders act in bad faith for personal benefit; (c) shareholders participate in unlawful acts committed by the company; or (d) shareholders unlawfully use company assets resulting in insufficient funds to pay debts.

Article 104(2) further stipulates that members of the board of directors are jointly and severally liable for unpaid debts if bankruptcy assets are insufficient, including directors who served within five years prior to the declaration where fault or negligence is proven. Article 104(4) excludes liability if

¹ Titik Tejaningsih, *Perlindungan Hukum terhadap Kreditor Separatis dalam Pengurusan dan Pemberesan Harta Pailit* (Yogyakarta: FH UII Press, 2016).

² John Y. Campbell, Jens Hilscher, and Jan Szilagyi, "Predicting Financial Distress and the Performance of Distressed Stocks," *Journal of Investment Management* 9, no. 2 (January 2010): 14–34.

³ Jonathan M. Landers, "A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy," *University of Chicago Law Review* 42, no. 4 (1975), <https://chicagounbound.uchicago.edu/uclrev/vol42/iss4/2/>.

⁴ Stephanie Ben-Ishai and Stephen Lubben, "Involuntary Creditors and Corporate Bankruptcy," *UBC Law Review* 45, no. 2 (2012): 253–82.

directors can prove that bankruptcy was not caused by their fault or negligence, that they acted in good faith and with prudence in the company's interests, had no conflict of interest, and took measures to prevent bankruptcy.

In light of the aforementioned articles, there are key considerations that can safeguard shareholders and directors against personal liability. Prior to anything else, it must be established that the actions in question were executed with diligence, good faith, and for the company's benefit and that they did not violate any legal regulations. The following points pertain to the BJR. The BJR safeguards directors exclusively, not shareholders. The term "judgment" in the context of "business judgment rules" refers to the representation of directors involved in corporate decision-making. They owe the company and its shareholders fiduciary duties, which include the obligation to be loyal to the company and to look out for its best interests (the duty of care and loyalties, respectively).⁵ In other words, fundamentally, BJR is a concept to avoid directors being held personally responsible as long as their actions and decisions are carried out in the interests of the company.⁶

While the BJR offers directors significant protection, it does not universally safeguard all actions taken by directors. Upon examination of Article 104 Section (4) of UU PT, it is evident that BJR is subject to specific conditions, including the requirement of acting in good faith and with caution, while prioritizing the company's interests. According to Munir Fuady, for decisions made by the board of directors to be protected by the BJR, they must meet certain conditions:⁷ business decisions must adhere to relevant legal provisions, business decisions must be made in good faith, business decisions must be made with a lawful intent, business decisions must be made with rational justifications, business decisions must be made with consideration for the precautionary principle, and business decisions must be made with the understanding that they are in the company's best interest.

Nevertheless, there are several concerns that practitioners must exercise caution regarding the application of BJR in Indonesia. Various provisions and theories can limit the application of the BJR. In Indonesia, the implementation of these limits may pose challenges. Despite the existence of unresolved cases, significant questions remain regarding the application of the BJR. In the analysis conducted by Andika Wijaya (2020), the differences in judges' opinions in the cases of Mahkamah

⁵ Julian Velasco, "How Many Fiduciary Duties are There in Corporate Law," *Cal. L. Rev.* 1231 (2010), https://scholarship.law.nd.edu/law_faculty_scholarship/590/.

⁶ Stephen M. Bainbridge, "The Business Judgment Rule as Abstention Doctrine," *Vanderbilt Law Review* 57, no. 1 (2019), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1665&context=vlr>.

⁷ Munir Fuady, *Doktrin-Doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia* (Jakarta: Citra Aditya Bakti, 2014).

Agung Number 01 PK N/2004 and 030 K/N/2003 regarding the applications of BJR were examined.⁸ Andika (2020) states that the absence of regulations on the application of BJR in bankruptcy cases in Indonesia accounts for this discrepancy. The application of the BJR in specific cases can be challenging for practitioners due to ambiguity,⁹ resulting in varying opinions and verdicts.

Although the requirements of the Business Judgment Rule appear relatively clear in theory, uncertainty arises when these requirements are applied in bankruptcy proceedings. In ordinary corporate management, directors are expected to make business decisions involving risk and uncertainty. However, once a company enters bankruptcy, those same decisions are often reassessed by creditors, curators, and courts to determine whether they contributed to the company's financial collapse. This creates a fundamental legal question as to whether compliance with the elements of good faith, prudence, and corporate interest alone is sufficient to trigger Business Judgment Rule protection, or whether additional limitations should apply.

The issue becomes even more complex when the challenged decision is alleged to have violated legal obligations. In such circumstances, it remains unclear whether courts should prioritize the directors' business judgment or the legality of the conduct itself. Consequently, the central concern is not merely whether directors acted in the company's interests, but whether Business Judgment Rule protection can survive when the underlying decision contains an element of illegality.

To illustrate the practical significance of this issue, it is necessary to examine several Indonesian cases involving bankruptcy and tax-related obligations. These cases reveal different judicial approaches toward directors who justified their decisions on business grounds despite allegations of legal violations. Rather than focusing solely on the financial consequences of the decisions, these cases raise broader questions regarding the relationship between business discretion, fiduciary duties, and compliance with mandatory legal obligations.

The bankruptcy case of PT Artika Optima Inti (OPI), as reflected in Supreme Court Decision Number 070 PK/Pdt.Sus/2009, illustrates the practical difficulties in determining the boundaries of directors' liability in bankruptcy proceedings. The company delayed mandatory tax payments for several years due to financial difficulties, resulting in a substantial tax obligation that reduced the assets available for distribution to other creditors. Although the directors were not held personally liable, the case raises important legal questions concerning the extent to which directors may rely on the Business Judgment Rule when business decisions contribute to financial distress and affect creditor interests.

⁸ Andika Wijaya, "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia," *Yuridika* 35, no. 1 (2019), <https://doi.org/10.20473/ydk.v35i1.12436>.

⁹ *Ibid.*

The uncertainty becomes more apparent when compared with other Indonesian cases involving directors' liability. Differences in judicial reasoning regarding the interpretation of good faith, prudence, fiduciary duties, and directors' responsibility in financially distressed companies have produced inconsistent outcomes. Differing judicial approaches in Supreme Court Decisions Number 01 PK/N/2004 and Number 030 K/N/2003 demonstrate the absence of a clear and uniform framework governing the application of the Business Judgment Rule in bankruptcy-related disputes. Consequently, directors, creditors, and legal practitioners often face uncertainty regarding the circumstances under which the Business Judgment Rule should apply and when directors may be held personally liable.

This condition gives rise to what may be described as a "Never-Ending Cycle of Judgment," namely a recurring pattern in which corporate decisions that initially fall within managerial discretion are repeatedly reassessed through successive legal proceedings after the company experiences financial failure. Decisions that were originally made in the course of ordinary business operations may subsequently become the subject of judicial scrutiny, creating uncertainty as to whether directors will ultimately receive Business Judgment Rule protection or be exposed to personal liability. The absence of clear parameters for distinguishing legitimate business risk from actionable misconduct contributes to this cycle of continuing legal reassessment.

Accordingly, the central problem addressed in this research is the lack of clarity regarding the normative and jurisprudential limits of the Business Judgment Rule in Indonesian bankruptcy proceedings. This uncertainty raises fundamental questions concerning how courts should evaluate the elements of good faith, prudence, legality, and fiduciary duties when reviewing directors' decisions in bankruptcy cases, as well as the circumstances under which Business Judgment Rule protection should cease to apply.

METHODS

This research employs a normative juridical approach, focusing on the analysis of legal norms, principles, and doctrines relevant to the Business Judgment Rule (BJR). The study primarily utilizes secondary legal materials, including statutory regulations, court decisions, scholarly articles, and legal commentaries from both national and international sources. A comparative analysis is conducted to examine how different jurisdictions, particularly Indonesia and selected common law countries, interpret and apply the BJR in the context of corporate decision-making and bankruptcy proceedings. The research also investigates the extent to which judicial discretion and legal doctrine limit the applicability of BJR protections. Emphasis is placed on identifying the threshold of legality and good faith as essential criteria for management's protection under the rule. Legal interpretation methods,

such as systematic and teleological interpretation, are employed to assess the coherence and purpose of BJR within corporate law frameworks. This methodology is intended to produce a theoretical and prescriptive insight into how BJR operates as both a shield and a boundary in legal practice. The results aim to clarify the legal landscape surrounding managerial accountability, particularly in financially distressed companies.

DISCUSSION

Business Judgment Rules: Explaining the Rules

The Business Judgment Rule (BJR) is a legal doctrine providing that corporate directors are not personally liable for the consequences of business decisions, even when those decisions result in losses, provided certain conditions are met. Originating from United States corporate law and common law tradition, the BJR shields directors' business decisions from judicial second-guessing. According to Stephen M. Bainbridge, the doctrine balances the authority of the board of directors with their accountability to shareholders.¹⁰ However, the BJR cannot automatically justify every board decision. To avoid personal liability, directors must satisfy specific requirements. According to Munir Fuady, these include:¹¹ (1) compliance with applicable law; (2) good faith; (3) lawful intent; (4) rational justification; (5) observance of the precautionary principle; and (6) action in the company's best interests.

The doctrine rests on the assumption that the board of directors is the most competent body to manage the company. Article 1(5) of UU PT affirms that directors are fully authorized and responsible for managing the company in accordance with its purposes and objectives, and for representing it both inside and outside court. Further regulation is found in Article 97 of UU PT. Article 97(3) requires directors to prove that: (a) losses were not caused by their fault or negligence; (b) management was conducted in good faith and with prudence in the company's interests; (c) no conflict of interest existed; and (d) efforts were made to prevent further losses. Article 97(5) confirms that directors shall not be held liable if these conditions are satisfied.

In accordance with BJR's doctrine, the board of directors is regarded as the preeminent authority with regard to the operation and decision-making of the organization. Consequently, the authority to make decisions pertaining to the operations of a company is vested solely in the board of directors. Even a court of law may not cast doubt on the directors' decisions. The court's sole responsibility is to ascertain whether any violations of legal regulations have occurred. They are not

¹⁰ Bainbridge, "The Business Judgment Rule as Abstention Doctrine."

¹¹ Fuady, *Doktrin-Doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*.

tasked with evaluating the appropriateness of a previously executed business decision.¹² This is predicated on the United States' interpretation of the BJR, which contributed to the development of the abstention doctrine under the presumption that lawmakers lack adequate business knowledge. The decisions rendered by the board of directors of a company are therefore impracticable to scrutinize. Consequently, legal actions filed against directors regarding their business decisions—wherein the degree of wrongdoing is contested—are frequently dismissed by the court on the grounds of this doctrine. Despite the directors being primarily entrusted with fiduciary duty, where each individual involved is burdened with significant responsibility.

American case law forms the foundation of the BJR. The Delaware Supreme Court has emphasized that the doctrine involves both procedural and substantive components. Procedurally, the decision-making process must be proper and informed; substantively, the transaction must not clearly harm the corporation. In *Grobow v. Perot*, the court reaffirmed that directors must act in good faith, prioritize corporate interests, conduct adequate review, and fulfill their duty of loyalty for BJR protection to apply.¹³

In civil law jurisdictions, where legislation is the primary source of law, courts interpret the BJR within statutory fiduciary duties, including duties of care and loyalty. Delaware is a leading jurisdiction in BJR development. Under Del. Code Ann. Tit. 8, §141(a), corporate management is vested in the board of directors. Directors must exercise their fiduciary duties for the benefit of the company and its shareholders. This principle aligns with Indonesian law, which requires directors to act in accordance with the company's purposes and in its interests.

Cases involving the Rules

In reference to the preceding explanation, the application of BJR is governed by a number of crucial rules of the game, including the fact that all decisions must be executed in good faith, in adherence to legal principles, and in the best interest of the organization in alignment with its goals and objectives. Nevertheless, a pivotal inquiry within this framework pertains to whether or not every component of the BJR must be cumulative. If not, does that imply that the BJR is inapplicable in situations where the directors assume responsibility?

Numerous cases that can be utilized as references to aid in answering this question are elaborated upon in the following sections.

1. *OPI's Bankruptcy Case*

An objection to the partition of the bankruptcy estate (bankruptcy boedel) was raised

¹² Fred B. G. Tumbuan, *Himpunan Mengenai Beberapa Produk Legislasi dan Masalah Hukum di Bidang Hukum Perdata* (Jakarta: Gramedia Pustaka Utama, 2017).

¹³ Hendra Setiawan Boen, *Bianglala Business Judgment Rule* (Jakarta: Tatanusa, 2008).

by PT Bank Mandiri, a separatist creditor, in the OPI bankruptcy case. The preferred creditor, Tax Service Office (KPP) Pratama Jakarta Tanah Abang Dua possesses a cumulative sum of Rp. 25,264,802,240 (twenty-five billion two hundred sixty-four million eight hundred two thousand two hundred and forty rupiah) in tax receivables. This sum represents the debtor's (PT. Artika Optima Inti) tax liability that has remained unpaid for several years.

In the case of *Tax Service Office (KPP) Pratama Jakarta Tanah Abang Dua's* tax receivables against PT. Artika Optima Inti, the Supreme Court allowed a request to examine its report. Specifically, the ruling stipulated that PT Artika Optima Inti's bankruptcy estate (bankruptcy boedel), valued at Rp. 43,978,519. 780 (forty-three billion nine hundred seventy-eight million five hundred nineteen thousand seven hundred eighty rupiah), must be repaid to the tax authorities in the amount of Rp. 25,264,802,240 (twenty-five billion two hundred sixty-four million eight hundred two thousand two hundred forty rupiah), refer to Indonesian Supreme Court Decision Number 070 PK/Pdt.Sus/2009. Undoubtedly, this decision is detrimental to other creditors who owe PT Artika Optima Inti receivables, as they will be granted a significantly reduced portion of said receivables. Consider the wages of the organization's personnel and PT Bank Mandiri, a separatist creditor in this instance. Moreover, since 1998, PT Artika Optima Inti has consciously opted not to fulfill its tax obligations, despite the fact that such compliance is mandatory.

2. *Hardy's Case in Denpasar District Court Decision Number 19/Pid.Pra/2018/PN Dps.*

In this case, the Director of PT Hardys Retailindo (PT HR), I Gede Agus Herdiawan, was declared a suspect by Directorate General of Taxes Bali Regional DGT Office for tax evasion. For this reason, I Gede Agus Herdiawan (applicant), who was represented by his attorneys, filed under the *case registry number 2550 / Daf / 2018 in the Denpasar District Court in 2018* for a pre-trial proceeding. The applicant claimed that the company's precarious financial state, precipitated by technological advancements and fierce competition in the industry, led to the merging of funds designated for tax payments and operational funds. The applicant contended that this course of action was taken in an effort to preserve the organization. Despite this, the company ultimately failed to survive. Yet, the applicant attempted to resolve PT HR's tax assets in the form of seventeen SHM that DGT Bali was scheduled to auction off. PT HR made an effort to meet its tax payment obligations during that time period. On May 21, 2017, the company submitted an installment of Rp. 500,000,000 (five hundred million rupiah), and on June 21, 2017, the amount was 1,086,363,637 (one billion eighty-six million three hundred sixty-three thousand six hundred thirty-seven). This action demonstrated that PT HR continued to fulfill its tax obligations in good faith and in accordance with its legal responsibilities.

On September 25, 2017, the Surabaya Commercial Court was placed in a PKU status with all of its legal ramifications by decision *No. 29/Pdt.Sus-PKPU/2017/PN-NIAGA*, resulting in the management of PT HR being carried out jointly by the management. Furthermore, the applicant's right to oversee PT HR's assets was revoked in November 2017, when the company was officially declared bankrupt, accompanied by all the legal ramifications. For this reason, the curator dispatched a letter to the DGT of Bali, which contained the tax payment information for PT HR. Despite the absence of a response, DGT Bali continues to classify the applicant as a suspect. If it is already in the bankruptcy process, several experts presented, for example, M. Hadi Subhan, stated that the obligation shifts to the curator and administrators in managing PT HR's assets—especially as there is the fact that the takeover was by way of credit novation by PT Arta Sedana. Reflecting on a portion of this case, the judge has ruled that DGT Bali's conduct with regard to the applicant's statements of suspicion is invalid on procedural grounds. Additionally, it is noteworthy to mention that the curator and administrator now bear the responsibility for fulfilling tax obligations on behalf of management, rather than the applicant.

3. *Directors of PT United Coal Indonesia (UCI) v KPP Wajib Pajak Besar Satu (Constitutional Court Decision Number 41/PUU-XVIII/2020)*

This case begins with a tax statement sent by KPP Wajib Pajak Besar Satu to the directors of PT United Coal Indonesia (UCI). Despite the fact that PT UCI was declared bankrupt in accordance with *Putusan Pengadilan Niaga Jakarta No. 32/Pdt.Sus/Pailit/2014/Pn.Niaga.Jkt/Pst.*, UCI forfeited the authority to oversee its assets subsequent to its bankruptcy declaration, and said authority was subsequently transmitted to the curator. The curator, who is serving as the administrator and tax insurer of the bankrupt company, has been charged the tax liability of PT UCI by the Jakarta Tax Office One (*Kantor Pelayanan Pajak Besar Satu Jakarta*). The tax liability amounts to Rp. 43,334,542,465 (forty-three billion three hundred thirty-four million five hundred forty-two thousand four hundred sixty-five rupiah). The directors of UCI, however, were unexpectedly held accountable by Jakarta Tax Office in May 2019. The tax debt of UCI was levied against the directors, who were still affiliated with their role as management at that time. Furthermore, rather than being designated to the company, the bill was sent to the individual residences of each director. The nullification of NPWP is regulated in accordance with the provisions of *Article 32 Section (2) and Article 2 Section (6) of the Law of the Republic of Indonesia Number 23 of 2007*, which amends *the Law of the Republic of Indonesia Number 6 of 1983 regarding General Provisions and Tax Procedures (KUP Law)*. Nevertheless, the agreement lacks a provision concerning the

expulsion resulting from a corporation's bankruptcy. The tax collection was a result of unresolved tax obligations owed by UCI to Jakarta Tax Office One, despite the completion of the bankruptcy process.

In light of this matter, Taufik, a former director of UCI, petitioned the Constitutional Court for judicial review under *Article 2 Section (6) and Article 32 Section (2) of the KUP Law*, with the following justifications:

1. *In managing a company, limited liability of directors applies, not extending to personal assets.*
2. The directors cannot be prosecuted and held personally liable in the event of a financial loss for the company, in accordance with the BJR principles;
3. The taxation was not conducted in accordance with the principles of conditional personal liability. Directors may only be subject to taxation in cases where their actions are proven to be negligent or wrongful;
4. The directors' liability in the event of bankruptcy is limited to the degree that they can be proved to be the direct cause of the company's insolvency.

With respect to this matter, the Constitutional Court ruled that the applicant may continue to be liable for UCI taxes on the basis of their legal standing as established in Article 32 Section (2) and Article 2 Section (6) of the KUP Law. This is because of the applicant's duties as the director and the person responsible for overseeing the company's taxes, despite the fact that UCI has been declared insolvent by a permanent court order and the curator has completed the curation process. Moreover, the Court concludes that the applicant has successfully demonstrated the presence of a causal connection between the implementation of the standard and the loss of the presumption of constitutionality. Consequently, the applicant possesses legal standing to participate in the case as an applicant.

The applicant filed a petition to evaluate the constitutionality of Article 32 Section (2) and Article 2 Section (6) of the KUP Law. Fundamentally, Article 32 Section (2) governs the conditions under which a legal entity's representative is excused from the requirement to be personally and/or jointly liable to pay a legal entity's tax burden. The Director General of Taxes is tasked with regulating the terms and conditions for the abolition of an individual's NPWP pursuant to *Article 2 Section (6)*. As per the applicant's assertion, the exemption stipulated in *Section (2) of Article 32* should additionally encompass the administration of legally recognized entities whose corporations have been declared bankrupt. The applicant further asserts that *Article 2 Section (6)* should encompass provisions governing the deletion of the director's NPWP by Director General of Taxes in the event of the company's bankruptcy declaration.

In response to the applicant's appeal, the court observes that the Taxpayer Identification

Number (NPWP), also known as the *Nomor Pokok Wajib Pajak*, is essentially a registration number or identification number issued by the Director General of Taxes on behalf of the nation. Therefore, the elimination of NPWP, irrespective of the reason for its removal (bankruptcy or other similar factors), does not nullify the obligation of citizens to pay taxes. This is as a result of the fact that tax obligations are generated by profit-generating economic activities. Put simply, a taxpayer status is granted to a specific entity or individual who meets the criteria of being a tax subject and possesses a taxable product, such as income or profit.

The court notes, with regard to the tax collection of legal entities on behalf of the applicant as taxpayers, that the management of a legal entity's daily operations, which includes the execution of various corporate responsibilities, would continue to necessitate the participation of human employees. This is due to the fact that despite being identified as such, a legal entity is incapable of autonomous behavior or action without the presence of living humans as representatives. Therefore, it is imperative that the management of a legal entity bears accountability for the daily operations of the entity they represent and oversee, including the settlement of tax debt obligations.

In regard to tax debts, the Court supervises the rational requirement that taxes be paid, given that taxes are typically imposed in relation to the earnings or profits of a legal organization. Tax will be assessed on the company's earnings and will not be levied if there are none. It is even required by the Limited Liability Company Law that profits be subject to taxation prior to their distribution as dividends to the shareholders of the company. Therefore, as per the Court's ruling, unpaid taxes are attributable to the oversight and deliberate actions of the management. Subsequently, the company's management assumes exclusive responsibility for it.

As specified in Article 32 Section (2) of the KUP Law, if an accident or tragedy precludes the company's management from repaying the debt, the management may petition the Director General of Taxes for an exception. The degree of liability that the entity's management must assume is contingent on the manner in which the loss transpires, specifically whether it is the result of intentionality, negligence, or both on the part of the management. In light of these factors, the Court concludes that the petition filed by the applicant is not supported by legislation. Consequently, the Court rules against the applicant's petition in its totality in its ruling.

Are the Rules Applied Uniformly in every Circumstances?

The preceding cases demonstrate that the principal difficulty in applying the Business Judgment Rule does not lie in identifying the existence of business risk, but rather in determining the point at which judicial deference to managerial discretion should end. While the Business Judgment Rule is intended to prevent courts from second-guessing business decisions, bankruptcy proceedings

often require courts to examine the consequences of those decisions more closely because creditors' interests become directly affected.

This tension creates an unresolved legal problem. If the doctrine is applied too broadly, directors may rely on the Business Judgment Rule to avoid accountability for decisions that violate legal obligations. Conversely, if courts review every unsuccessful business decision, the protective function of the doctrine would be undermined. Therefore, a clear limitation is necessary to distinguish protected business judgment from conduct that should attract personal liability.

Discussions of the Business Judgment Rule (BJR) are inseparable from its philosophical foundation. The doctrine protects directors on the assumption that they are the party best positioned to understand the company's condition and therefore to make rational business decisions. Weinberger identified four principal justifications for BJR: first, directors possess superior business expertise compared to courts; second, BJR encourages risk-taking in business decisions; third, courts lack the institutional competence and resources to evaluate complex commercial judgments; and fourth, the doctrine reinforces corporate governance structure.¹⁴ In the United States and the United Kingdom, BJR operates largely as an abstention doctrine. Courts rarely review business decisions to avoid hindsight bias.¹⁵

In contrast to the undefined regulations of Indonesia's UU PT, which do not specify certain criteria, a number of renowned American cases have effectively furnished a rudimentary comprehension of the essential components that comprise the term 'good faith' as it relates to the BJR. For instance, in the 2003 Disney Case, good faith was defined as *"knowing or deliberate indifference to duty to act faithfully and with appropriate care is conduct that may not have been taken honestly and in good faith to advance the best interest of the company"*.¹⁶ Similarly, Hillary Sale has also state:¹⁷

"Good faith-based liability moves the bar from negligent behavior to deliberately indifferent, egregious, subversive, or knowing behavior, and thereby raises issues related to the motives of the actors. Two of the cases that discuss good faith indicates that a breach of the duty requires motive-based allegations of severely reckless or seemingly intentional behavior. Situations involving deliberate indifference or abdication would also cross the line."

Accordingly, actions taken in the company's best interest constitute good faith in the BJR as

¹⁴ Lael Daniel Weinberger, "The Business Judgment Rule and Sphere Sovereignty," *Thomas M. Cooley Law Review* 27, no. 2 (2010): 42.

¹⁵ Aurelio Gurrea Martínez, "Re-Examining the Law and Economics of the Business Judgment Rule: Notes for Its Implementation in Non-US Jurisdictions," *Journal of Corporate Law Studies* 18, no. 2 (January 23, 2016): 417–38, <http://dx.doi.org/10.2139/ssrn.2720814>.

¹⁶ Chancellor William B. Chandler III, In re The Walt Disney Co. Derivative Litigation, No. Consolidated C.A. No. 15452-NC (Court of Chancery of the State of Delaware May 28, 2003).

¹⁷ Hillary A. Sale, "Delaware's Good Faith," *Cornell Law Review* 78, no. 2 (January 2004): 456–95.

defined by this explanation. As a result, the BJR characteristics such as good faith, prudence, and being done in the best interests of the organization all add up to one thing: all decisions were made for the advantage of the company. Therefore, on the basis of these three components, BJR is an endless cycle that provides absolute protection for the directors. Despite the fact that the law expressly grants specific restrictions. This is due to the presumption that the directors have the most comprehensive understanding of the company's interests, and thus initially because BJR is an abstention doctrine.

Among the various elements commonly associated with the Business Judgment Rule, legality occupies a unique position. Unlike good faith, prudence, or business rationality, legality can be objectively assessed against existing legal norms. Consequently, the question becomes whether compliance with the law should function merely as one element among several requirements of the Business Judgment Rule, or whether it should operate as a threshold requirement whose violation automatically removes the protection of the doctrine.

One thing that remains to be assessed is whether the decision of the board of directors is contrary to the applicable legal regulations. In these cases, at least there is nothing to doubt about the board of director's decision, which is that the action was taken in the interests of the company. However, this leaves its conformity with the law to be assessed. In Indonesia itself, unlawful acts are often associated with the provisions of Article 1365 *Burgerlijke Wetboek* (BW). The article stipulates: "*Every unlawful act which causes damage to another person, obliges the person through whose fault the damage is caused, to compensate for the damage.*"

Furthermore, theoretically an act can be considered as unlawful if its: first, the act is contrary to the perpetrator's legal obligations. Second, the act is contrary to the subjective rights of others. Third, it is contrary to common decency. Fourth, it is contrary to propriety, accuracy, and prudence.¹⁸ Referring to this explanation, it is quite clear that the act of delaying tax payment obligations, as carried out in the three cases above, are against the law. This is because the nature of taxes must be paid immediately. The act of delaying the payment of taxes in itself is against the law because a company can be defined as a legal entity. The second point can be connected, however with the requirement that we assume that the state is a public legal entity, which includes as a person (*recht person*). Apart from that, it is quite clear that delaying tax payments is an unlawful act. In this regard, an act that violates the law, if seen from the word "against" has both active and passive characteristics, the active nature can be seen if you deliberately carry out an act that causes harm to another person, so deliberately create a movement that the active nature of the term is visibly "against".

¹⁸ Rosa Agustina, *Perbuatan Melanggar Hukum* (Jakarta: Pascasarjana Universitas Indonesia, 2003).

On the contrary, if an individual is deliberately silent, or in other words, they are passive to the point that they caused harm to another person, then they can also be categorized as being "opposed."

The elements of an unlawful act are as follows:¹⁹ there must be an action. In this context, the action can be both positive or negative; the act must be against the law; there is loss; there is a causal relationship between the unlawful act and the loss; and there is fault (*schuld*).

Finally, taking the previous explanations into account, three rules in the BJR can be harmoniously applied, due to the nature of its never-ending cycle in assessing them. The three cases which have been previously outlined in the last sub-chapter were able to demonstrate this point. Efforts that were made in good faith are always done based on the company's best interests. However, even when a company is faced with such severe and inescapable judgments, one factor that would not be influenced by the capacity of the directors is the perspective and the fact that the BJR is an abstention. Whether or not the decision is against the current Indonesian law, is not becoming a consideration, except in the Constitutional Court Decision in UCI cases.

The ways to Implement Limitation: Is the Veil Piercing Doctrine Possible?

The principle of limited liability in limited liability companies may be compromised under certain circumstances. This perception is founded upon the legal principle known as "piercing the corporate veil." As stated in Black's Law Dictionary, the term "piercing the corporate veil" refers to a judicial procedure wherein personally liable corporate officers, directors, and shareholders are held accountable for the unlawful actions of the corporation.²⁰ In its simplest form, "piercing the corporate veil" refers to a judicial procedure wherein individuals who hold personal liability for the unlawful actions of a corporation are held accountable to its directors, officers, and shareholders. The regulations governing this notion in Indonesia are outlined in Article 3, Section (2) of UU PT. It stipulates the following:

- a. The company has failed to meet or is failing to meet its legal obligations;*
- b. The shareholders in question have utilized the company in bad faith for personal gain, either directly or indirectly;*
- c. The shareholders in question have been involved in unlawful acts committed by the company;*
or
- d. The shareholder has used the company for improper purposes, either directly or indirectly.*

The amendment to Article 3(2) emphasizes that limited liability may be removed in specific

¹⁹ Ibid.

²⁰ Bryan A. Gardner, *Black's Law Dictionary*, 8th Edition (St. Paul: Thomson West Publishing Co., 2004).

circumstances, resulting in shareholders' personal assets being used to satisfy corporate obligations.²¹ Veil piercing thus transfers liability beyond the corporate structure and eliminates the protection normally afforded by limited liability.²²

Courts typically consider multiple factors when determining whether veil piercing is appropriate, including:²³ commingling of corporate and personal assets; diversion of corporate funds; failure to observe corporate formalities; personal representations of liability; absence of corporate records; identical ownership or management across entities; inadequate capitalization; lack of separate assets; use of the corporation as a mere shell; sole ownership; shared offices or employees; concealment of ownership; disregard of arm's length principles; manipulation of assets to the detriment of creditors; use of the corporation for illegal purposes; and formation of the corporation to assume existing liabilities.

These factors are not applied mechanically. Courts must balance the policy of protecting shareholders through limited liability against the need to prevent abuse. Importantly, some factors such as inadequate capitalization may fall within the responsibility of directors, meaning veil piercing may potentially affect both shareholders and management.²⁴

Limited liability was historically justified because its economic benefits outweigh its risks. In the United States case of *William H. Sanders v. Roselawn Memorial Garden, Inc.*, the court affirmed that corporate separateness exists to promote convenience and justice.²⁵ Although a corporation is ultimately a legal construct, its separate personality facilitates commercial activity.

Nevertheless, corporate separateness is not absolute. Statutes often provide explicit exceptions, reflecting policy decisions to restrict limited liability in certain circumstances. Courts in common law jurisdictions have occasionally extended liability to shareholders and directors where the corporate form is abused. The well-known English case of *Solomon v. A. Solomon & Co. Ltd.* established that a corporation is a separate legal entity distinct from its shareholders. Lord Watson emphasized that legislative intent must be derived from enacted provisions and reasonable implications.

This statement concerns a separate entity that cannot be extended to a point beyond its reason and policy, also it will be disregarded when it happens. A distinct corporate identity may be bestowed in support of a substantial underlying policy, such as the advancement of trade and corporate expansion. Consequently, it cannot be invoked for purposes that fail to further these

²¹ M. Yahya Harahap, *Hukum Perseroan Terbatas*, 1st ed. (Jakarta: Sinar Grafika, 2013).

²² Gunawan Widjaja, *Risiko Hukum sebagai Direksi* (Jakarta: Forum Sahabat, 2008).

²³ David H. Barber, "Piercing the Corporate Veil," *Willamette Law Review* 17 (1981): 371–404.

²⁴ *Ibid.*

²⁵ *Sanders v. Roselawn Memorial Gardens, Inc.*, No. 12662 (Supreme Court of Appeals of West Virginia February 27, 1968).

objectives, to the detriment of the state's substantial public interests that it endeavors to safeguard via legislation and regulation.

Conversely, the English common law system exhibits numerous parallels with civil law jurisdictions, including Germany. To the extent that the court's aversion to the "piercing the veil" doctrine increases. The failure to adhere to limited liability is known as "*Durchgriffshaftung*" in Germany. This pertains to circumstances not expressly governed by the law in which the proprietors of a corporation are held personally liable for its debts and the existence of the corporation itself is disregarded.²⁶ In modern legal doctrine, the application of veil piercing is restricted to situations involving mixed assets, while courts apply the common law of torts in situations where shareholders deliberately bring about the insolvency of the company.

Considering the significance of legislative discretion in establishing the circumstances under which "piercing the corporate veil" may be invoked, it is unsurprising that courts in the aforementioned jurisdictions seldom disregard the corporate entity. Only a limited number of instances of piercing occur in reality. This is consistent with the fact that the legislature ultimately resolved the decades-long debate surrounding limited liability, which refined its benefits and drawbacks. In accordance with the separation of powers between the legislature and the judiciary, policies must be respected. Furthermore, the benefit of limited liability is regarded as crucial to the growth and progress of a developed market economy. Moreover, courts are typically attuned to the importance of certainty in commercial disputes.²⁷ Courts' tendency to fail to differentiate between involuntary creditors (who are victims by default) and voluntary creditors (who voluntarily enter into contracts with the company) is partially attributable to the significance they place on certainty. Considering the fact that veil piercing is permissible only in extraordinary situations, the corporate vehicle, with its limited liability and legislative intent, is no longer suitable.²⁸

Despite the apparent applicability of the "piercing the veil" doctrine to parties other than shareholders, it can also function as an alternative due to the "contrary to law" element that motivates its application. Nevertheless, it is evident that the UU PT solely governs its intended audience of shareholders. Additionally, several well-known cases demonstrate that the doctrine applies exclusively to shareholders. An instance of such a case that transpired in the Netherlands is the renowned *Osby* case, which was decided by the Dutch Supreme Court (*Hoge Raad*) in 1981. The

²⁶ Carsten Alting, "Piercing the Corporate Veil in American and German Law-Liability of Individuals and Entities: A Comparative View Recommended Citation Piercing the Corporate Veil in American and German Law-Liability of Individuals and Entities: A Comparative View," *Tulsa Journal of Comparative and International Law* 2 (1994), <http://digitalcommons.law.utulsa.edu/tjcilhttp://digitalcommons.law.utulsa.edu/tjcil/vol2/iss2/4>.

²⁷ Frank H. Easterbrook and Daniel R. Fischel, "Limited Liability and the Corporation," *University of Chicago Law Review* 89 (1985), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2165&context=journal_articles.

²⁸ Larry E. Ribstein, "Limited Liability and Theories of the Corporation," *Maryland Law Review* 50, no. 1 (1991): 80-129.

ruling established a principle in the Netherlands whereby the liability of shareholders for the debts of the company shall be governed by tort law.²⁹

The primary foundation for shareholder liability against third parties in the Netherlands may be deemed to be unlawful conduct.³⁰ The fundamental inquiry in the Osby case concerned whether Osby Sweden, the parent company, could be held liable in the eyes of the creditors of a wholly owned subsidiary of Osby in the Netherlands, given that the parent company had extended credit to the subsidiary and pledged all tangible assets as security. Subsequently, Osby Netherlands feigned financial health despite lacking the necessary assets to satisfy its debt obligations.³¹

Similarly, in the United States case of *Glazer v. Commission of Ethics and Public Employees*, veil piercing was applied where corporate norms were abused and the corporation's separate status was not maintained.³² Generally, American courts will disregard corporate personality where it is used to defeat public interest, justify wrongdoing, or protect fraud, although standards vary among jurisdictions. An element of misconduct is typically required.³³

Obstacles surrounding the Way

In principle, UU PT provides a mechanism to address alleged misuse of the Business Judgment Rule (BJR) through Article 138. Under Article 138(1), an examination may be requested before the district court if members of the board of directors or commissioners commit wrongdoing that harms shareholders or third parties. However, Articles 138–140 of UU PT function primarily as procedural entry points for investigation. Subsequent liability for losses may still fall under Article 1365 BW concerning unlawful acts, although this consequence is not expressly regulated within UU PT itself.

Although UU PT offers this mechanism, the three cases previously discussed demonstrate additional obstacles when BJR limitations intersect with bankruptcy proceedings. In those cases, the directors committed unlawful acts prior to the maturity of tax obligations, later invoking BJR as a defense. All were subsequently subjected to bankruptcy proceedings without prior examination under Article 138 to determine potential illegality. Instead, liability was assessed directly under UU Kepailitan.

The difficulty lies in the separation between UU Kepailitan and UU PT. Bankruptcy law does not incorporate the examination mechanism under Article 138 UU PT. As highlighted in Wijaya's

²⁹ "Holding Multinational Enterprises Liable in France and the Netherlands," *University of London Press*, n.d., <https://read.uolpress.co.uk/read/4e51d941-618e-4b43-a7bc-805bdd09d88d/section/d950d85a-4914-4075-b145-de84f6dd3665#fn1357>.

³⁰ P. Sanders and W. Westbrook, *Bv En Nv*, 9th Edition (Deventer: Uitgeverij Kluwer BV, 2005).

³¹ *Ibid.*

³² Roy Goode, *Principles of Corporate Insolvency*, 4th edition (London: Sweet and Maxwell, 2011).

³³ Sanders and Westbrook, *Bv En Nv*.

research, this regulatory gap has produced inconsistent interpretations of BJR in bankruptcy cases, including the three referenced cases in which the possibility of applying BJR was not substantively assessed.³⁴

Another contributing factor is the limited opportunity to apply alternative legal frameworks that may restrict BJR. In the three tax-related cases, debt settlement was conducted *mutatis mutandis* under UU Kepailitan, despite indications of legal violations by the authorities. Ideally, disputes involving tax obligations should be governed by tax law principles, as tax evasion falls within the domain of taxation law. However, Law No. 14 of 2002 on the Tax Court restricts tax disputes to those arising from administrative tax decisions and subject to appeal before the Tax Court, as defined in Article 1(5). Enforcement actions may also proceed under the Undang-Undang Penagihan Pajak dengan Surat Paksa.

Consequently, in bankruptcy proceedings, assessment of alleged BJR violations is confined to the framework of UU Kepailitan, without systematic consideration of UU PT or tax law mechanisms. The result is that distribution of the bankruptcy estate may continue to disadvantage third parties, while directors remain able to invoke BJR protection despite apparent breaches of legal provisions.

CONCLUSION

On the basis of the preceding explanation, it is possible to draw the general and specific conclusion that the BJR concept is clearly limited in bankruptcy cases solely by whether or not the executed decision violates the law. This is as a result of the limitations imposed by UU PT, which include good faith, prudence, and actions undertaken in the best interest of the organization. Nevertheless, all three components are evaluated within the same conceptual framework, as the degree of prudence and good faith is determined by whether the action is carried out in the organization's best interest. Furthermore, courts in certain jurisdictions, such as Indonesia, frequently refrain from evaluating the BJR on the grounds that the company's directors are more knowledgeable than the court regarding the organization. In light of this, the sole limiting criterion that can be applied to restrict BJR is whether or not the decision was rendered illegal, which includes bankruptcy proceedings.

REFERENCES

- Agustina, Rosa. *Perbuatan Melanggar Hukum*. Jakarta: Pascasarjana Universitas Indonesia, 2003.
- Alting, Carsten. "Piercing the Corporate Veil in American and German Law—Liability of Individuals and Entities: A Comparative View." *Tulsa Journal of Comparative and International Law* 2

³⁴ Wijaya, "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia."

- (1994). <http://digitalcommons.law.utulsa.edu/tjcl/vol2/iss2/4>.
- Bainbridge, Stephen M. "The Business Judgment Rule as Abstention Doctrine." *Vanderbilt Law Review* 57, no. 1 (2019). <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1665&context=vlr>
- Barber, David H. "Piercing the Corporate Veil." *Willamette Law Review* 17 (1981): 371–404.
- Ben-Ishai, Stephanie, and Stephen Lubben. "Involuntary Creditors and Corporate Bankruptcy." *UBC Law Review* 45, no. 2 (2012): 253–82.
- Boen, Hendra Setiawan. *Bianglala Business Judgment Rule*. Jakarta: Tatanusa, 2008.
- Campbell, John Y., Jens Hilscher, and Jan Szilagyi. "Predicting Financial Distress and the Performance of Distressed Stocks." *Journal of Investment Management* 9, no. 2 (January 2010): 14–34.
- Easterbrook, Frank H., and Daniel R. Fischel. "Limited Liability and the Corporation." *University of Chicago Law Review* 52 (1985). https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2165&context=journal_articles.
- Fuady, Munir. *Doktrin-Doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*. Jakarta: Citra Aditya Bakti, 2014.
- Gardner, Bryan A. *Black's Law Dictionary*. 8th ed. St. Paul: Thomson West Publishing Co., 2004.
- Goode, Roy. *Principles of Corporate Insolvency*. 4th ed. London: Sweet and Maxwell, 2011.
- Harahap, M. Yahya. *Hukum Perseroan Terbatas*. 1st ed. Jakarta: Sinar Grafika, 2013.
- Landers, Jonathan M. "A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy." *University of Chicago Law Review* 42, no. 4 (1975). <https://chicagounbound.uchicago.edu/uclrev/vol42/iss4/2/>.
- Martínez, Aurelio Gurrea. "Re-Examining the Law and Economics of the Business Judgment Rule: Notes for Its Implementation in Non-US Jurisdictions." *Journal of Corporate Law Studies* 18, no. 2 (2018): 417–38. <https://doi.org/10.2139/ssrn.2720814>.
- Ribstein, Larry E. "Limited Liability and Theories of the Corporation." *Maryland Law Review* 50, no. 1 (1991): 80–129.
- Sale, Hillary A. "Delaware's Good Faith." *Cornell Law Review* 78, no. 2 (January 2004): 456–95.
- Sanders, P., and W. Westbrook. *BV en NV*. 9th ed. Deventer: Uitgeverij Kluwer BV, 2005.
- Shubhan, M. Hadi. *Hukum Kepailitan (Prinsip, Norma, dan Praktik di Pengadilan)*. 2nd ed. Jakarta: Kencana Prenadamedia Group, 2009.
- Tejaningsih, Titik. *Perlindungan Hukum terhadap Kreditor Separatis dalam Pengurusan dan Pemberesan Harta Pailit*. Yogyakarta: FH UII Press, 2016.
- Tumbuan, Fred B. G. *Himpunan Mengenai Beberapa Produk Legislasi dan Masalah Hukum di Bidang Hukum Perdata*. Jakarta: Gramedia Pustaka Utama, 2017.
- University of London Press. "Holding Multinational Enterprises Liable in France and the Netherlands." n.d. <https://read.uolpress.co.uk/read/4e51d941-618e-4b43-a7bc-805bdd09d88d/section/d950d85a-4914-4075-b145-de84f6dd3665#fn1357>.
- Velasco, Julian. "How Many Fiduciary Duties Are There in Corporate Law?" *California Law Review* 98 (2010). https://scholarship.law.nd.edu/law_faculty_scholarship/590/.
- Weinberger, Lael Daniel. "The Business Judgment Rule and Sphere Sovereignty." *Thomas M. Cooley Law Review* 27, no. 2 (2010): 42.

Widjaja, Gunawan. *Risiko Hukum sebagai Direksi*. Jakarta: Forum Sahabat, 2008.

Wijaya, Andika. "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia." *Yuridika* 35, no. 1 (2019). <https://doi.org/10.20473/ydk.v35i1.12436>.

Wild, Susan Ellis. *Webster's New World Law Dictionary*. Canada: Wiley Publishing Inc., 2006.

In re The Walt Disney Co. Derivative Litigation. Consolidated C.A. No. 15452-NC. Court of Chancery of the State of Delaware, May 28, 2003.

Salomon v. A. Salomon & Co. Ltd. [1897] AC 22 (HL).

Sanders v. Roselawn Memorial Gardens, Inc. No. 12662. Supreme Court of Appeals of West Virginia, February 27, 1968.