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Reexamining Corporate Personality Through the Lens of Reflective Loss

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I. Introduction

When I taught corporate law, I used to tell my students to think of a corporation as a box. The box, of course, is a metaphor for its legal personality. As you know, legal personality refers to the ability to have rights and obligations as an independent entity. It is nothing more than a “creature of law” designed to serve as a tool for simplifying the complex legal relationships that surround a common enterprise. In other words, it is “a working tool fashioned for convenience.” As the term "person" implies, legal personality allows a corporation to be treated like a natural person. It is important to remember, however, that a corporation is given legal personality not because it is really the same as a natural person, but because it is functionally more convenient.

From a functional perspective, corporate personality is known to serve two distinct functions. The first is the “separating function”, which separates the corporate assets from the personal assets of the shareholders. The second function of corporate personality is not as prominent as the separating function, but is essential to the effective operation of a large business enterprise. Thinking of a corporation as an independent entity distinct from its shareholders makes it easier to establish a centralized management structure under which individual shareholders are given a limited set of rights. Let me call this the “centralizing function”. Both of these functions are essential for a corporation with many shareholders. Conversely, their utility shrinks in a close corporation with few shareholders.

At this point, I would like to reiterate that the corporate personality and its two functions are merely "tools" for the convenience of entrepreneurs. And, accordingly, I argue that we should not read too much into the corporate entity, which is merely a tool after all. If the separate legal entity leads to inappropriate or even unjust consequences, it can, and should, be disregarded. A prime example of such a case is when the doctrine of disregarding the corporate entity is applicable. This doctrine of corporate disregard is based on the belief that a corporation, although distinct from its shareholders, cannot be viewed as completely insulated from its shareholders. Recently, a prominent commentator aptly compared the wall separating the corporation from its shareholders to a "semipermeable membrane.” Then, one might ask, why should we treat the wall between a corporation and its shareholders differently from the wall

between individuals? The first thought that comes to mind is that there is a “special relationship” between the corporation and its shareholders. Although widely in dispute now, the conventional wisdom in corporate law theory is that a corporation exists primarily, if not exclusively, for the benefit of its shareholders. This special relationship between the corporation and its shareholders makes it unreasonable to treat them as completely separate legal entities.

Once we acknowledge that corporate personality is a "semipermeable membrane," our next question is to what extent we should allow exceptions to corporate personality. This is essentially a policy question, not a conceptual one. In most jurisdictions, it is the court, not the parliament, that makes such a policy decision. The degree to which corporate personality is respected varies considerably from jurisdiction to jurisdiction. My home country, South Korea, for example, belongs to a group of jurisdictions where corporate personality is strictly respected. I once referred to this strict attitude of Korean courts as "entity absolutism”. A perfect example of entity absolutism is found in how Korean courts dealt with cases involving so-called one-person firms. Korean courts still hold that if the 100% shareholder of a corporation uses corporate funds for personal use, the shareholder is guilty of the crime of breach of trust, regardless of whether any creditor of the firm suffers a loss as a result.

In other developed jurisdictions, however, the doctrine of corporate personality appears to be less formidable. Courts in many jurisdictions appear to be adopting a more flexible interpretation of corporate personality. There are exceptions to this trend of flexible interpretation. A notable example of such exceptions can be found in court decisions relating to reflective loss of shareholders, the topic for this lecture.

As you know, shareholder reflective loss refers to the loss suffered by shareholders due to a decline in the value of their shares as a result of a loss suffered by the corporation. Reflective loss is usually discussed in the context of whether a shareholder may pursue her personal claim against the wrongdoer for such loss. However, a shareholder's direct claim for reflective loss is in tension with corporate personality in two ways. First, it undermines the centralizing function of corporate personality by allowing shareholders, rather than a corporate body, to sue for damages arising from corporate loss. A more troubling aspect of the shareholder's claim for reflective loss is that it undermines the separating function of corporate personality because the damages are paid directly to the plaintiff shareholder rather than to the corporation that originally suffered the loss. Thus, a shareholder's direct claim for reflective loss is a concept inherently at odds with corporate personality. The tension between the two is treated differently in different jurisdictions.

It is now well established in many jurisdictions that a shareholder cannot sue for reflective loss. Although this principle goes by various names, I will call it the prohibition principle. However, some jurisdictions recognize a few exceptions to this principle. Again, the scope of the exceptions varies from jurisdiction to jurisdiction. Korean courts have so far denied any room for exceptions, while Japanese courts are more willing to grant exceptions. Germany generally falls somewhere in between. Meanwhile,

common law jurisdictions such as the United Kingdom and Singapore, like Korea, have generally adhered to the prohibition principle, when shareholders act in their capacity as shareholders. In contrast, the United States takes a more flexible approach, as does Japan.

The purpose of my presentation today is to reexamine the prohibition principle in light of the growing trend toward more flexible interpretations of corporate personality. My argument is that the widespread judicial adherence to the prohibition principle should be relaxed to facilitate fair and effective shareholder protection.

Let me now talk briefly about how I intend to proceed today. First, I will give you a comparative overview of the different approaches taken by courts in different jurisdictions. I will then examine the rationales advanced in favor of the prohibition principle and offer my personal views at the end.

II. Comparative Overview

1. South Korea

I would like to begin my comparative overview with South Korea, which is one of the most ardent adherents to the prohibition principle. The decision that first adopted the principle was made more than thirty years ago. It involved a venture capital firm called Halla, which purchased thirty percent of the shares of a company called Daeil Precision Manufacturing ("Daeil"). X was Daeil's representative director, a functional equivalent of a CEO, and the controlling shareholder with more than sixty percent. Shortly after Halla invested funds, X siphoned off the funds, resulting in Daeil's bankruptcy. Halla sued X for damages under Article 401 of the Korean Commercial Code. Article 401 authorizes a third party to bring an action against a director for breach of fiduciary duty. This is distinct from a derivative action as the third party is suing in respect of her own loss, not the company’s loss. No one disputes that the third party here includes shareholders as well as creditors. However, the Supreme Court rejected Halla's claim on the ground that the third party's loss under Article 401 does not cover the shareholder's reflective loss. However, the court gave no reason for this conclusion and also denied X's liability in tort. Although this decision is still strictly followed in Korea, Japanese judges are more flexible than their Korean counterparts.

2. Japan

Japan's Companies Act also has a provision equivalent to Korea's Article 401. Commentators have long debated whether or not this provision covers the shareholder's reflective loss. Like the Korean court in Halla, many scholars argue that a shareholder who suffers a reflective loss should pursue a derivative action rather than a direct action. The difference between direct and derivative actions becomes particularly important when the defendant director is also a controlling shareholder of a close corporation. There are a few court decisions that allowed a plaintiff shareholder to bring a direct action.

The court’s reasoning is that paying damages to the corporation would not be helpful from the plaintiff's perspective due to the defendant’s effective control of the corporation. Unlike the Korean court in Halla, the Japanese courts reached the opposite conclusion by considering the practical consequences of the judgment. Support for this pragmatic approach of the courts now seems to be widespread in Japan.

What is of more theoretical interest to law professors like me is their discussion of what I call, “passive loss.” A passive loss arises when an increase of the value of the firm's assets is prevented by the directors. A perfect example of passive loss is the underpriced issuance of stock to a third party. Some scholars argue that when this happens, it is the shareholders who suffer a loss, not the corporation. Their reasoning is that even in the case of an underpriced issuance, the firm's wealth increases even though the shareholders suffer a dilution of their share value. Most commentators, however, hold that the corporation suffers a loss as a result of the underpriced share issuance. What intrigues me is the attitude of the Japanese courts. The Japanese courts seem to think that both the corporation and the shareholders suffer loss as a result of an underpriced share issuance. They allow not only the corporation but also shareholders to claim damages against the director responsible for the underpriced issue. The shareholder's claim may be based on the Japanese equivalent of Article 401 or on the tort provision of the Civil Code.

3. Germany

Together with South Korea and Japan, Germany belongs to the civil law family. Interestingly, Germany takes yet another approach to the same issue. Now, the Germany’s stock corporation law also allows shareholder derivative suits. However, unlike Korea and Japan, it has no provision equivalent to Article 401 of Korea. Nevertheless, it is generally accepted that a director may be liable to the plaintiff shareholder under the tort provisions of the Civil Code. Unfortunately, I do not have time to go into the tort provisions of the German Civil Code here. It is sufficient for our purposes to say that a shareholder may sue in tort, regardless of whether the corporation has a claim against the director. There is an important limitation, however. If the shareholder wins, the damages must be paid to the corporation, not to the plaintiff shareholder. This is based on the well-established view in German jurisprudence that the company's assets are tied to the purpose of the corporation. In other words, while the German courts relax the centralizing function of the corporate personality, they adhere to the separating function.

4. The United States

I will now turn to the common law jurisdictions. Let me begin with the United States. At the outset, I must admit that it is difficult to generalize about corporate law in the United States, a federal nation composed of fifty different states. To summarize, although the courts in the United States adhere to the prohibition principle, they are as flexible as their Japanese counterparts in allowing exceptions.

A. Close Corporations

In the US courts, skepticism about the prohibition principle first appears in the context of close corporation. In a 1956 decision called Watson v. Button, the court permitted a shareholder to bring a direct action against another shareholder for misappropriation of corporate funds in a close corporation with only two shareholders. Its reasoning is fairly straightforward. The prohibition against shareholder suits is based on factors such as avoidance of duplicative litigation, protection of creditors, and equality of shareholders, and none of these factors were applicable in this case. Following this decision, there have been many court decisions recognizing an exception to the prohibition principle in the context of a close corporation.

The American Law Institute (ALI) has further elaborated on the logic behind these decisions. The ALI suggests that, in the case of a close corporation, the court should have the discretion to allow a shareholder to bring a reflective loss claim if certain conditions are met (§7.01(d)). Those conditions are that (i) it does not unfairly subject the corporation or the defendants to a multiplicity of actions; (ii) it does not materially prejudice the interests of the corporation's creditors; and (iii) it does not interfere with an equitable distribution of the recovery among all interested persons.

Although this recommendation of ALI has received much attention, it has not been adopted by a majority of states. According to a paper published in 2008, of the 37 states that have considered the issue, only 16 states have adopted the ALI's recommendation.

B. Changes in Delaware Case Law

Another situation generating skepticism about the prohibition principle concerns underpriced share issuances. On this issue, Delaware case law has gone through twists and turns. Due to time constraints, I will not go into the details of the development of Delaware case law on this issue. Instead, let me just discuss a famous 2021 decision, Brookfield Asset Management v. Rosson, which marks an end point in the evolution of Delaware case law.

The facts in Rosson can be summarized as follows. Firm A, a public company with a 51 percent controlling shareholder Y, conducted a private placement of common stock which was undervalued. Y purchased all of the new shares, substantially increasing his ownership ratio. X, a shareholder of Corporation A, filed a class action and derivative suit against Y and other directors alleging that the private placement diminished not only her economic interest and voting power, but also the assets of the corporation. Subsequent to the filing of the lawsuits, Y purchased all of the remaining shares, causing X to lose her status as a shareholder and, accordingly, her standing to bring a derivative action. Y then filed a motion to dismiss X's direct action. The Delaware Supreme Court ultimately dismissed X' direct claim, holding that X's claim was derivative. This type of strict approach by the Delaware court is shared by courts in other common law jurisdictions such as the United Kingdom and Singapore.

5. The United Kingdom and Singapore

Since many of you are probably much more familiar with UK and Singaporean law on this issue, I will only briefly touch on them. In the UK, the prohibition principle is now well established. A leading case on this issue is the Prudential decision in 1982. In the Prudential decision, the Court of Appeal held that shareholders could not sue for reflective loss, if the corporation had a cause of action against the same wrongdoer. Despite criticism from academics including Professor Pearlie Koh, my friend at SMU, the decision stood until the Marex decision in 2020.

Marex involved a controlling shareholder who, in breach of his duties to the firm, diverted corporate assets to another firm. The action against the controlling shareholder was brought, not by the minority shareholders but by the creditors of the firm. The creditors sought damages, claiming that the controlling shareholder's misconduct constituted a tort. Although the court was divided, both the majority and minority opinions ruled in favor of the plaintiff creditors, holding that the prohibition principle did not apply to the creditors' claim. The majority opinion went on to affirm the Court of Appeal’s decision in Prudential, holding that the prohibition principle did apply to a shareholder's reflective loss claim.

The prohibition principle is also largely upheld in Singapore. In this regard, we should refer to the Tendcare decision in 2021. As many of you may recall, the facts of the case are as follows. Gong, a controlling shareholder and director of Tendcare, a Singapore holding company, transferred corporate funds to its 100% subsidiary and then moved the funds back into Gong's personal account through a third-party named Miao. The holding company claimed damages against Gong for breach of directors' duties, and against Miao for dishonest assistance. The High Court upheld both claims. Miao appealed, arguing that it was the subsidiary, not the holding company, that suffered the direct loss from the transaction.

The Court of Appeal dismissed Miao's appeal. The court followed the majority opinion in Marex and held that the prohibition principle applied to shareholder reflective loss. In other words, the court held that a decline in share value based on the impairment of the firm’s assets does not constitute a shareholder loss under Singapore law. So how could Tendcare, which is the shareholder of the subsidiary, prevail? The court upheld the holding company's claim by flexibly characterizing its loss as a direct loss. The court’s reasoning is that the holding company's own funds were deprived as a result of Gong's misconduct.

IV. Analysis of the Rationales for the Prohibition Principle

1. Rationales for the Prohibition Principle

As we have seen, the prohibition principle is widely accepted in various legal systems. A variety of justifications have been advanced. They can be broadly divided into two groups: conceptual and practical.

A conceptual rationale for the prohibition principle stems from corporate personality. With legal personality, an injured corporation can bring a claim against the wrongdoer in its own name. The conduct of litigation should be the responsibility of a corporate body such as the board of directors. The shareholders, who are most interested in the performance of the corporation, are not allowed to take the initiative in the lawsuit, due to the centralizing function of corporate personality.

However, the prohibition principle is more often supported by rationales related to practical considerations. Among these practical rationales, I believe the following six considerations are most commonly advanced: (i) automatic recovery; (ii) double recovery; (iii) creditor protection; (iv) duplicative litigation; (v) equality of shareholders; and (vi) predictability.

2. Criticism of the Rationales

Let me now examine the validity of these rationales in turn.

A. Conceptual Rationale - Instrumentality of Corporate Personality

As mentioned earlier, the reason why we give legal personality to a corporation is not because it is similar to a natural person, but because legal personality is convenient for organizing the corporation's legal relations with others. Thus, since legal personality is used as a policy instrument, how much effect it should be given is basically a policy decision, not a conceptual one. Accordingly, not only the separating and centralizing functions of corporate personality, but also the prohibition principle based on these functions, should be recognized only to the extent that they serve the interests of shareholders and creditors.

Whether and to what extent exceptions to the prohibition principle should be recognized is a matter of policy to be considered in connection with the centralizing and separating functions of corporate personality. With respect to the centralizing function, the question is whether we can allow a shareholder to bring a reflective loss claim. Under the prohibition principle, the shareholder's reflective loss will remain unrecovered if the derivative action proves to be ineffective. In such a situation, from the shareholder protection perspective, it may be better to compromise the centralizing function by allowing the shareholder to file a direct claim. I believe that such a solution is more consistent with the instrumental nature of corporate personality, and it has been adopted by courts in Japan and Germany.

Next, let me discuss exceptions to the prohibition principle in the context of the separating function. The separation of corporate assets and liabilities from those of shareholders is primarily for the protection of corporate creditors and for the survival of the joint enterprise. If neither of these considerations is relevant, the court need not adhere to the separating function. This is precisely the situation in the Korean Halla case. Suppose the controlling shareholder of a close corporation with only two shareholders has stolen corporate assets. In such a situation, the trust between the two shareholders is already damaged, leaving little room for the continuation of their joint enterprise. Since

a derivative action will not produce a desirable result for the plaintiff shareholder, it will be more practical and sensible to allow the shareholder to bring a direct action if it does not raise concerns about creditor protection.

Some commentators attempt to justify the application of the prohibition principle from another perspective. According to them, its disadvantages for shareholders are an inevitable consequence of corporate personality, which these shareholders should have taken into account when they decided to take advantage of the benefits of corporate personality. This argument is not convincing, however, because it presupposes the immutability of the prohibition principle. It contradicts the notion that both corporate personality and the prohibition principle are merely policy instruments which should be modified according to benefits and costs. What is more important, therefore, is the validity of the practical reasons to which we now turn.

B. Practical Rationales

(i) Automatic recovery

Let me first discuss the automatic recovery argument. It is based on the belief that the shareholder's reflective loss is automatically recovered when the corporation's loss is recovered. According to this logic, the shareholder's direct claim is not necessary as long as there is a possibility of a suit by the corporation (or a derivative suit).

This argument is intuitively compelling, but it is not without limitations. First, it assumes that a suit by the corporation or a derivative suit will be effective. But anyone familiar with the realities of business knows that this is not always the case. Second, it also assumes that the corporation's loss is equal to the sum of the shareholders' reflective losses. The problem, however, is that there are instances where the shareholders’ losses far exceed the corporation’s loss. Such instances may occur when the share price plummets, or more unfortunately, the firm goes bankrupt as a result of the defendant’s misconduct. In such an instance, which is not uncommon in real life, the shareholder’s loss will remain unrecovered as long as we adhere to the prohibition principle and prohibit the shareholder from making a direct claim. But I have to admit that this is a complex problem that would take too much time to discuss properly, so I will skip it today.

(ii) Double recovery

Next, I turn to the double recovery argument. It is based on an intention to avoid double recovery that may arise when both a shareholder and the corporation file separate lawsuits. However, prohibiting a shareholder's direct action because of the risk of double recovery strikes me as unfair because it improperly favors the interests of the wrongdoer, the director, over those of the victim, the shareholders. There are two further reasons for my criticism. First, the risk of double recovery is not so significant in reality. As with the automatic recovery argument, the risk of double recovery arises only if the

corporation files a claim. In reality, however, the corporation does not necessarily take that step. It strikes me as unfair to block a shareholder's direct claim on the basis of a hypothetical possibility of corporate claim.

Second, if the corporation does file a claim, there are ways to minimize the risk of double recovery. The court may allow the shareholder's direct claim only in circumstances where the corporation is unlikely to sue, for example, where the corporation has refused to file a claim. The court may also dismiss the shareholder's claim if the corporation actually files its own claim. Lastly, the court may deduct the amount of damages paid to the shareholder when determining the amount of damages to the corporation.

Not surprisingly, the English and Singapore courts acknowledged that the risk of double recovery was not a basis for the prohibition principle.

(iii) Creditor protection

The creditor protection argument is based on the concern that direct compensation to the plaintiff shareholder affects the order of priority between shareholders and creditors. It is undeniable that a shareholder's direct claim can increase the risk of default by reducing the corporation's assets. However, there are many instances where the corporation can legally transfer its assets to shareholders despite the presence of creditors. Perhaps the most obvious example is the payment of dividends to shareholders. Therefore, creditor protection alone should not be used to block a shareholder's direct claim, at least as long as the claim does not risk putting the corporation at the risk of insolvency. One way to address creditor protection concerns is to allow the court, in its discretion, to order the defendant to pay the corporation when there are liquidity concerns, as in the US.

(iv) Duplicative litigation

The duplicative litigation argument is based on concerns about the confusion and waste that may result from multiple shareholder lawsuits. However, the confusion and waste associated with duplicative litigation is not a problem unique to lawsuits for reflective loss. Each jurisdiction has its own means of addressing this problem, such as through civil procedure rules. Thus, it is not persuasive to invoke duplicative litigation as a basis for the prohibition principle.

(v) Equality of shareholders

It is true that a direct action by a shareholder may create inequality between individual shareholders. In jurisdictions where class actions are not generally available, this type of inequality may be unavoidable to some extent. However, Inequality based on whether or not a shareholder sues is not limited to reflective loss cases. In addition, if a shareholder's direct action is permitted only in cases where a shareholder derivative action is not feasible, those shareholders who choose not to sue may have no standing to complain, because the lawsuit brought by the plaintiff shareholder did not harm

them in any way.

(vi) Predictability

An important advantage of the prohibition principle is its simplicity of application. No wonder some judges, especially those who are overwhelmed with cases, want to keep the prohibition principle. Under the principle, once the corporation's loss is recognized, shareholders are barred from filing a direct claim. Since direct shareholder claims are not permitted, both the centralizing and separating functions remain intact, and, as a result, the legal relationships surrounding the corporation remain simple. If, on the other hand, we recognize an exception to the prohibition principle, the predictability of legal outcomes is undermined, because the scope of the exception may not be clearly delineated.

We should not forget, however, that this is really just another example of the ubiquitous trade-off between reasonableness and predictability in the world of law. Predictability will be given more weight when it comes to the community of commercial transactions. In the context of ex post control of director conduct, I believe that reasonableness should be given more weight than predictability.

IV. My Personal View

My presentation so far is basically a summary of the existing discussion, prepared from the perspective of supporting a shareholder's direct claim. From now on, let me talk about my own view on this issue.

My argument can be summarized as follows. According to the prohibition principle, a shareholder's direct claim should not be allowed because her reflected loss is a loss in economic terms but not in legal terms. As I have shown, its rationale is not very persuasive. Adherence to the prohibition principle minimizes the confusion that may arise from the coexistence of corporate and shareholder claims. This is certainly an important virtue. But it has a critical flaw. The prohibition principle leaves a gaping hole in shareholder protection. Moreover, allowing shareholder claims for reflective loss would not necessarily create significant practical problems.

The critical question is how to recognize exceptions to the prohibition principle. In the conventional view, the starting point is the loss to the corporation. This approach appears to have been influenced by the concept of corporate personality. In reality, however, what matters is not the artificial concept of corporate personality, but the real entities involved, such as shareholders and creditors. Therefore, even when considering the issue of reflective loss, the starting point should be the shareholders, not the corporation. An essential function of corporate law is to provide a remedy when a shareholder suffers a loss. The existence of a shareholder's loss does not necessarily mean that her claim must be recognized. If her loss is based on the corporation's loss, allowing the corporation to file a claim may be more efficient from the perspective of the shareholders as a whole, and more appropriate from the perspective of the creditors.

The situation changes if the corporation fails to file a claim. We should then allow a shareholder to file

a derivative lawsuit, thereby relaxing the centralizing function of corporate personality. If she wins the derivative suit, the defendant is required to pay damages to the corporation. Thus, the separating function remains intact. In special circumstances, such as Halla, where paying damages to the corporation does not help the shareholders, it is necessary to allow the shareholder's direct claim despite the existence of the corporation's loss. According to this view, a breach of fiduciary duty may cause loss to the shareholders as well as to the corporation. In other words, the corporation's loss does not necessarily preclude the shareholder's loss.

This kind of interpretation, which recognizes the compatibility of shareholder and corporate damages, may sound complex or even confusing. I believe that such confusion may be due to the fact that lawyers have been captivated by the fiction of corporate personality for too long. [About one hundred years ago, Oliver Wendell Holmes cautioned against conceptualism with an aphorism: "To rest upon a formula is a slumber that, prolonged, means death."] If we wake up and remember that only shareholder damages are real and corporate damages are recognized as a matter of convenience, the coexistence of corporate and shareholder damages should not seem particularly peculiar.

In my view, the legal personality of a corporation is not as perfect as that of a natural person. In other words, corporate personality is flexible or permeable. Flexibility, however, does not necessarily imply inferiority. The flexibility of the corporate personality derives from its nature as an instrument to facilitate transactions. As the doctrine of "piercing the corporate veil" clearly illustrates, the court should be allowed to modify the permeability of the corporate veil depending on the circumstances in order to achieve a fair and reasonable result. It is only through such creative judicial efforts that legal interpretation can produce human-centered legal results.

V. Concluding Remarks

This is basically what I have to say about the corporate personality and shareholder reflective loss. But those of you who come to a Jones Day lecture may expect to hear something grander and more profound, albeit weakly grounded. In an effort to satisfy such an audience, I would like to conclude this lecture with a few words from a comparative law perspective. First and foremost, my talk today seems to confirm that the boundaries between Continental and Anglo-American law, and the differences between lawyers in civil law and common law jurisdictions, are now blurred. Conventional wisdom has held that Anglo-American lawyers tend to be more flexible in their legal analysis than their counterparts in civil law jurisdictions. However, when it comes to shareholder reflective loss, Japanese judges, and to a slightly lesser extent, US judges are more flexible in recognizing an exception to the prohibition principle. In contrast, common law judges in the UK and Singapore adhere strictly to the prohibition principle and respect the power of corporate personality. Even more intriguing to me is the fact that Korea, Japan, and Germany, all of which belong to the civil law family, have different attitudes toward the prohibition principle. Personally, I am curious to know what drove the judges in these countries in such different directions on the same issue. But that inquiry would require much more sophisticated

comparative legal research, and is beyond the scope of this lecture.

It appears that this independent evolution of national law, which is taking place without regard to the traditional boundaries between continental and Anglo-American law, is not limited to shareholder reflective loss, but can also be observed in other areas of law. My personal view, however, is that this is not necessarily a bad thing. For one thing, the prevalence of such diversity provides an opportunity for a foreign law professor like me to be given an honorable opportunity like this. Thank you very much for your attention.