



- **REAL ESTATE, VIA PRIVATE EQUITY STYLE DISCIPLINE.**
- **ADMINISTRATION AND STRUCTURING.**
- **INVESTMENT MANAGEMENT.**

- **USD 15BILLION AUM.**
- **250+ EMPLOYEES.**
- **7 GLOBAL LOCATIONS.**

# Shams and the History of the Offshore Financial Industry:

How the two interact and why  
the sham concept (almost)  
doesn't exist.

## Objectives:

- 1) Does the sham concept exist?
- 2) How did it develop as the offshore world developed?
- 3) How do you prevent it?

“....It means acts done or documents executed by the parties to the “sham” which are intended to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intended to create.”

Lord Diplock in *Snook v London and West Riding Investments Ltd*  
[1967]

# TIMELINE

## History of the Offshore Financial World

### Industrial Revolution

Rapid commercialisation and huge investments following innovation in manufacturing requires equally innovative legal devices to help facilitate and protect investors.

1850

### Offshore Finance and Tax Planning

A growing middle-class in the Western world combined with an era of high taxes leads accountants and individuals specialising in tax advice to follow the banks offshore and provide tax planning from the fast growing unregulated area.

1960

### GFC

Global Financial Crisis leads to Governments worldwide seeking to increase tax revenues.

2008

### Morality

It is just as important to be moral in our actions and decisions, particularly as they will be judged on the standards of future generations.

2030?

### 1957 Euromarket/Eurodollar

Informal approval from the Bank of England allowing British banks to continue to trade in non-sterling currencies to non-British customers outside of the UK. UK Foreign Office also keen to get certain former colonies off the Government payroll.

### 1990 International Clients and the Family Courts

International clients begin using the services of the offshore world. At the same time the Family Court in the UK pushes back against the use of the Offshore world to circumvent family commitments.

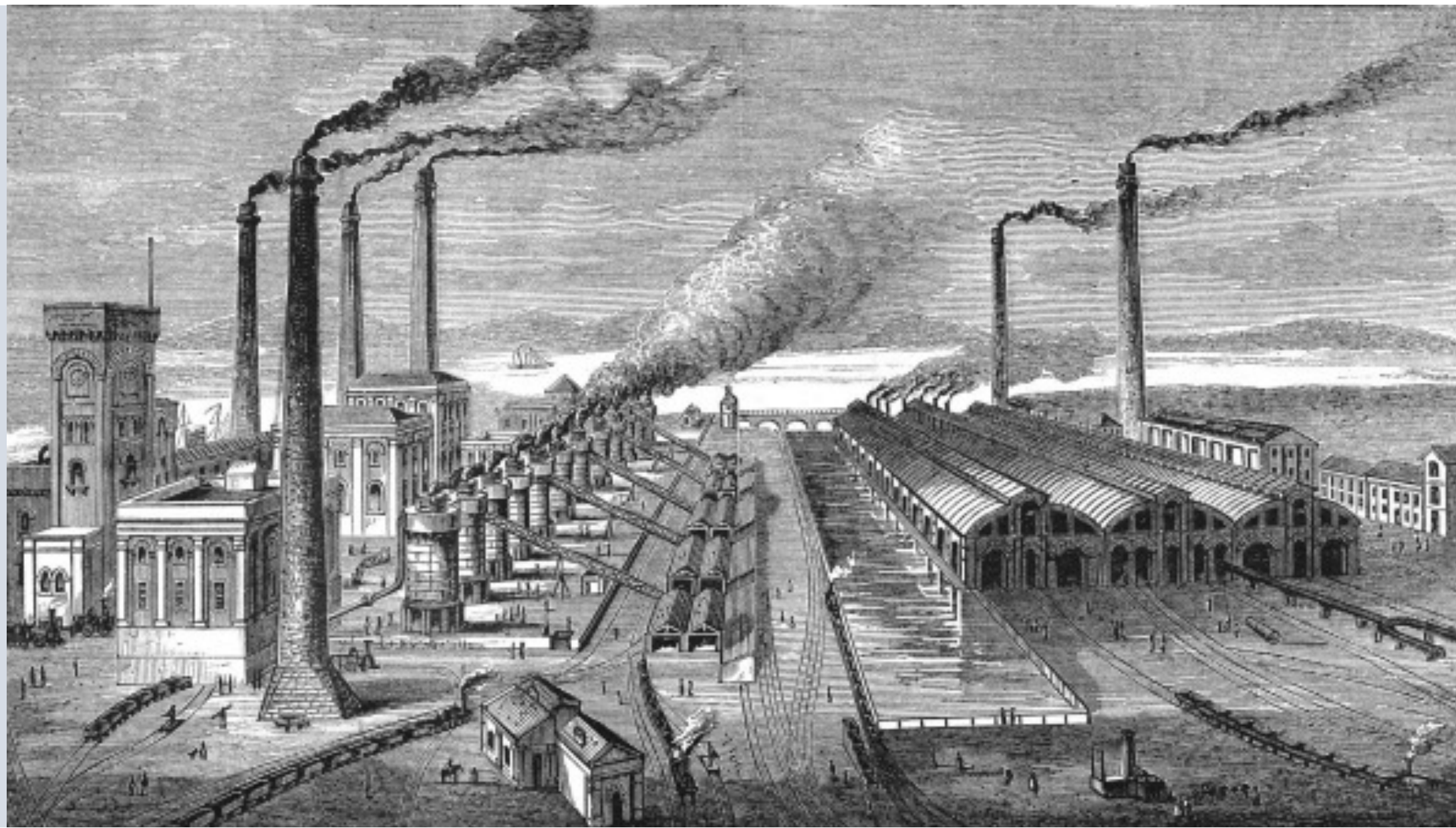
### 2018 Inequality and the 4th Industrial Revolution

FATCA, CRS and other AEOI initiatives enabled by advances in technology. Tax authorities now able to share and process enormous amounts of data. Inequality post-GFC and pre-dawn of AI a huge political and social concern.

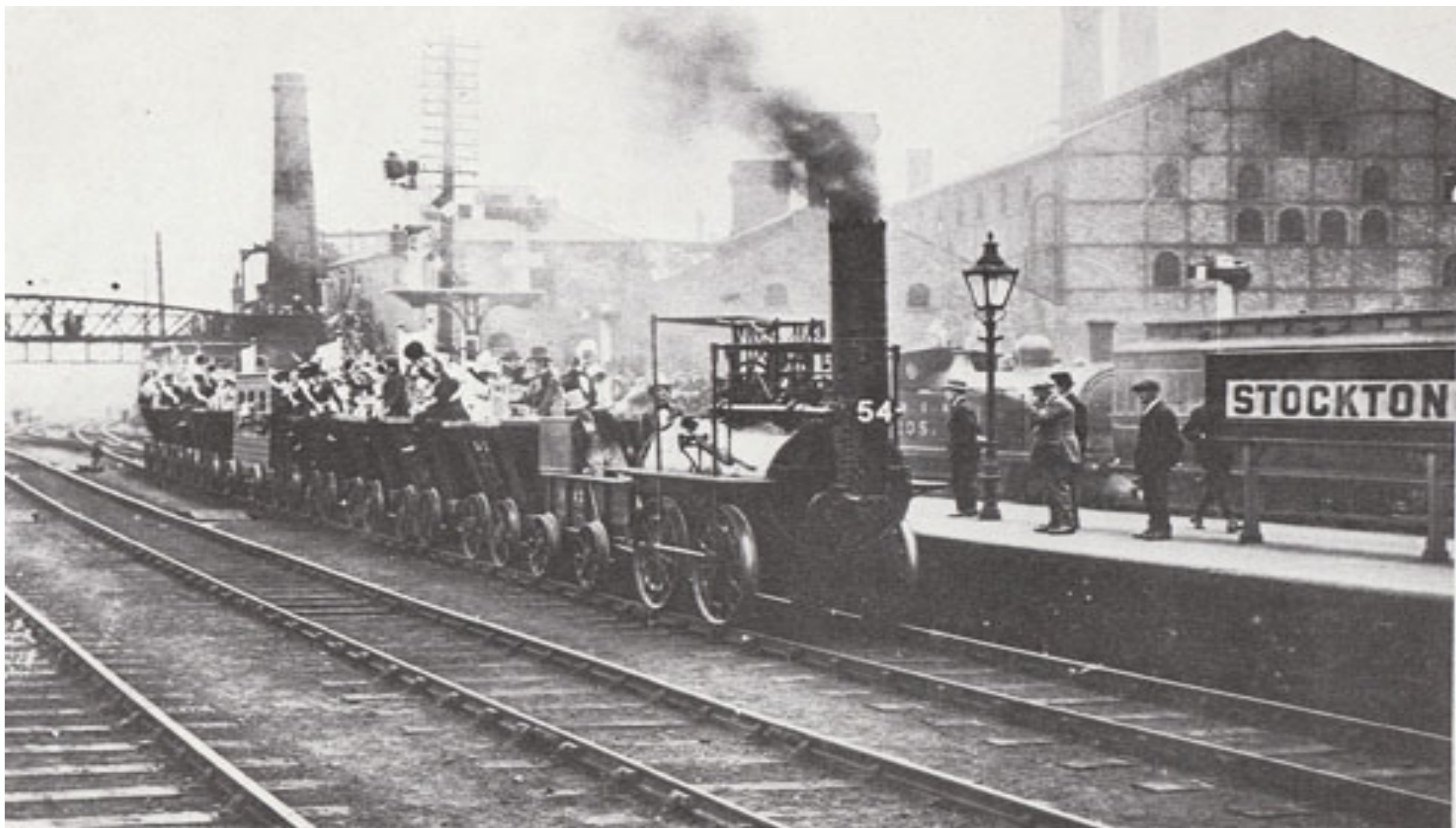
Ross Belhomme 2018 ©

1850-1960

INDUSTRIAL REVOLUTION





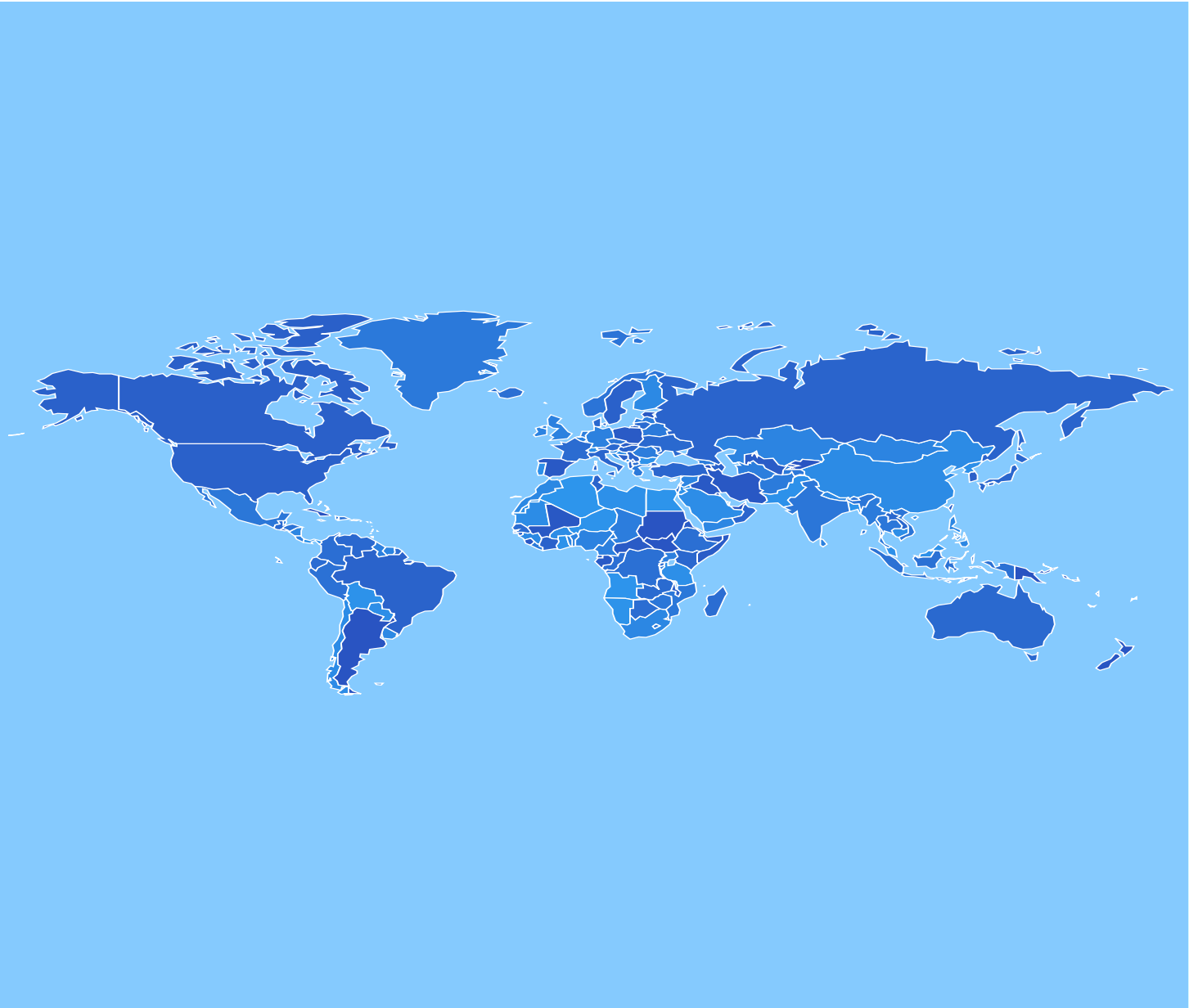


1960-1990

OFFSHORE FINANCIAL WORLD  
CREATED  
AND TAX PLANNING



- Jersey
- Guernsey
- Isle of Man
- BVI
- Cayman
- Bahamas
- Hong Kong
- Singapore



National Westminster Bank Plc v  
Jones

Midland Bank Plc v Wyatt

Alliance Bank JSC v Zhunus

1990 - 2008

# INTERNATIONAL CLIENT AND THE FAMILY COURTS

Abdel Rahman v Chase Bank [1991]

Re Fountain Trust [2005]

Hitch and others v Stone (Inspector of Taxes) [2001]

A v A and St George Trustees Limited and others [2001]

What is clear from these examples is that the so called sham doctrine does not exist in the sense that it is **not** a very clear doctrine with a specific purpose in a specific scenario which the courts can apply readily and uniquely to particular circumstances. However it is a concept that is retained and never specifically ever dismissed by a court, but kept in reserve in case it is needed should any other argument fail. Usually it is dismissed if possible. It suffices to say that there is simply a loose device to allow a court to depart from the facts presented to them where none of the other legal doctrines, for whatever reason, allow them to. Or perhaps where the court does not want to give its underlying full reasoning or analysis as to why a decision was given.



**”.....represents a potentially valuable judicial tool to undo wrongdoing in some cases, where no other principle is available”**

*- Lord Neuberger in Prest v Petrodel Resources Limited and others*

2008+

GFC / 4<sup>th</sup> INDUSTRIAL REVOLUTION

- Keep proper financial records. Shows your in control of the assets.
- Document everything you do to show independent thought.
- Closely follow the terms of any agreements that you put in place. Both parties!
- Educate the settlor/beneficiaries to ensure that they do the same and that they are fully aware of any legal arrangement they create and that they are aware of the legal and day-to-day consequences that follow.
- Ensure that there is some *moral* reason for setting up the trust. Could well be likely that setting up for pure tax purposes now is a risk.
- Perhaps avoid fancy legal tools like reserved power trusts, STAR/VISTA trusts e.t.c....
- Take professional advice.

**Further Reading:**

**Brooke Harrington,**

*'Trust and Estate Planning: The Emergence of a Profession and Its Contribution to Socioeconomic Inequality'*

(2012) Sociological Forum, Vol. 27, No. 4 p.[825]-[846].

**Donavan Waters QC,**

*'The Trust: Continual Evolution of a Centuries-Old Idea'*

(2007) 14 JITCP 4.

**John J Langbein,**

*'The Contractarian Basis of the Law of Trusts'*

(1995) Yale Law School Faculty Scholarship Series Paper 502

**Ronen Palan,**

*'International Financial Centers: The British-Empire, City-States and Commercially Oriented Politics'*

(2010) Theoretical Inquiries in Law 11.1.



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