The "No Reflective Loss" Principle: Towards to the "Priority Rule"

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Abstract: This essay discusses how the "no reflective loss" principle has developed and its current problem. "No reflective loss" principle, introduced in Prudential Assurance Co Ltd v Newman Industries Ltd (No.2), developed in Johnson v Gore Wood & Co, is gradually becoming unreasonable, since the application of it has expanded to an exaggerated extent. In the case Sevilleja v Marex Financial Ltd, "no reflective loss" principle was narrowed, but its fundamentalism brought other issues. Because of the poor policy considerations of "no reflective loss" principle, cases concerning reflective loss are more suitable to be resolved using the "priority rule". The "Priority rule" not only protects the autonomy of corporate governance, but also protects the interests of shareholders who are overlooked in "no reflective loss" principle and also prevents the problem of double recovery, so the future of this principle is brighter than that of "no reflective loss." Although this essay has discussed the "priority rule" mainly in two scenarios, there are certainly some refinements to applying it in practice. Further studies should be carried out on a practical level, relating to specific cases, by implementing this principle in existing cases.

1. Introduction

When a company, C, suffers a loss caused by a wrongdoer, D, the company has a right of action against D and the claim must be in the name of C, not in the name of a shareholder or any company member.[1] This principle was first set in Foss v Harbottle.[2] D's wrongful act against C, however, often impacts shareholders' interests in the form of 'the diminution in the value of their shares',[3] or 'a reduction in a dividend'.[3] A question consequently arises: can a shareholder recover these kinds of losses by suing D in their own name?[4] The answer is no, since these losses only reflect the loss suffered by the company.[1] This rule is called the "no reflective loss" principle.

"No reflective loss" was introduced in Prudential Assurance Co Ltd v Newman Industries Ltd (No.2) (Prudential).[5] The principle determined that the shareholder 'cannot recover a sum equal to the diminution in the market value of his shares, or equal to the diminution in dividend'.[5] Following Prudential, the lords in Johnson v Gore Wood & Co (Johnson) [6] understood it differently,[7] which facilitated the principle's subsequent evolution.[8] However, since then, the principle's 'tentacles have spread alarmingly, rather like some ghastly legal Japanese knotweed',[9] and it 'has been extended to the terrain of shareholder-creditor and pure unsecured creditor'.[10] Due to its 'increasingly anomalous results',[5] the principle has been fiercely criticised.

The case of Sevilleja v Marex Financial Ltd [11] (Sevilleja) discontinued the ongoing expansion of "no reflective loss". The judgment of Sevilleja narrowed the scope of reflective loss, and individuals asserting claims in another capacity are now judged as operating beyond their scope.[12] Sevilleja embodies our current understanding about the rules of "no reflective loss."

Although the Sevilleja judgement benefitted the principle, its suitability continues to be challenged.[3] Firstly, a variety of its policy considerations are flawed.[13] As "no reflective loss" has been considered 'a creature of policy',[20] these considerations should be addressed carefully. Secondly, personal duties that wrongdoers owe shareholders were undervalued by the majority in Sevilleja.[10] According to Ivan Sin, the majority's decision to prohibit shareholders from filing personal claims is disappointing,[10] and 'a retrograde step'.[10]

The "no reflective loss" principle needs to be altered. The "priority rule" is more appropriate than imposing an absolute bar on "no reflective loss," as the "priority rule" can overcome the flawed policy considerations of "no reflective loss," and balances all parties' interests more effectively.

This essay is organized as follows. Section B will explore the evolution of "no reflective loss" and how its rules are currently understood. Section C will analyse its flawed policy considerations, and section D will explain the benefits of the "priority rule". This essay concludes that the "priority rule" should be utilized wherever possible.
2. Development of the "No Reflective Loss" Principle

The "No reflective loss" principle emerged in *Prudential*,[5] yet the principle was built upon the rules of *Foss v Harbottle*. Several years later, the judgment of *Johnson* upheld and expanded "no reflective loss."[13] Unfortunately, after *Johnson*, its excessive expansion decreased the legitimacy of the principle, and different interpretations of its scope have led to different decisions by different courts. The Supreme Court in *Sevilleja* subsequently restricted its scope. That decision refined the "no reflective loss" principle. The rules in respect to the prohibition on recovery of reflective loss are derived from these cases and constitute our understanding of "no reflective loss" today.

(1) **Prudential: origin of "no reflective loss" principle**

In *Prudential*, the Prudential, as a minority shareholder of the defendant, Newman Industries Ltd, brought a claim against two directors of Newman on the grounds that they had defrauded the company.[7] Prudential sought damages, first via a derivative claim in the name of the company, and then through a personal claim that directors' wrongdoings had caused a loss in the share value. The first claim was rejected by the court: Prudential, the court ruled, could not recover a loss 'equal to the diminution in the market value of his shares, or equal to the likely diminution in dividend',[5] because such a 'loss' is merely a reflection of the loss suffered by the company, and shareholders themselves did not suffer any personal loss. Their only 'loss' is through the company, in the diminution in the value of the net assets of the company.[5]

These circumstances prohibited the recovery of reflective loss. Some points from *Prudential* are considered problematic, especially the 'indefensibly narrow' scope of the loss of shareholder.[14] Whereas these shortcomings, the decisions in *Johnson* refined the "no reflective loss" principle in *Prudential*.

(2) **Johnson: expansion of the rule in Prudential**

In *Johnson*, Mr. Johnson's company, in which he had virtually complete control of shares, had been represented by a firm of solicitors, Gore Wood. Following the suit brought by the company against the solicitors for negligent acting, Johnson sued the solicitors to claim a personal loss. The solicitors pleaded that the losses claimed by Johnson were reflective losses, since they were suffered by the company. The court then dismissed claims for reflective losses, but permitted the prosecution of other claims.

Lord Bingham helpfully categorised the situations in which the "no reflective loss" principle can be applied into three propositions. Proposition (i) illustrates that if a company suffers loss as a result of a breach of a duty owed to it, only that company may sue for that loss, not the shareholders.[6] Proposition (ii) says that if a company suffers loss but takes no action, a shareholder may sue to recover the loss even if the loss is reflective loss. Proposition (iii) indicates that both company and shareholders may bring a lawsuit if they both suffer losses as a result of independent breaches.

Proposition (i) covers the scenarios for a derivative claim, [13] where a shareholder can only claim losses in the name of the company instead of a personal capacity. Proposition (ii) and (iii) give two exceptions to "no reflection loss." [13] These rely on Lord Hotton's standpoint that that the 'more realistic assessment' is that the shareholder suffered a personal loss.[6]

The first exception from *Johnson* only arose when the company had no cause of action. However, exceptions were expanded in *Giles v Rhind*[6][15] in which the Court of Appeal held that the company's capacity to prosecute claims against the accused wrongdoer was denied due to the wrongful act the defendant committed, so the shareholder could pursue claims as an appropriate plaintiff.[15] The scope of *Giles v Rhind* was restricted immediately by *Gardner v Parker*,[6] the latter court held that the offence of the defendant 'did not, of itself, prevent that company from starting an action' and that there was insufficient evidence proving that 'any such impecuniosity had been caused by the wrongdoing alleged'.[16] Summarising these two cases is useful: the biggest hurdle to this Proposition (ii) depending on the *Giles v Rhind* exception is 'establishing the company's complete inability to bring its own claim which is directly caused by the alleged wrongdoing'.[17]

Lord Bingham's second exception covers a circumstance where the perpetrator breaches their duties to both company and shareholders. Here, the fundamental requirement is to distinguish between the "separate and distinct loss," and reflective loss. The test in *Johnson* is 'to ascertain if the loss claimed appears to be or is one which would be made good if the company had enforced its full rights against the party responsible.'[6] Therefore, if company recovers all its losses, and the shareholder is fully compensated for the value of his shares being diminished, the loss of the shareholder is called reflective loss.[13] A question remains, however: what if a shareholder is unsuccessful in recovering all his losses?[13] The answer is uncertain, given the imprecision in calculating the diminution in value of shares, and the complexity of practical application.

As this question involves establishing whether there is 'an exact correspondence between the company's loss and a diminution in the value of shares',[13] this crucial factor will be discussed in Part C.

(3) **Sevilleja: narrows the scope of reflective loss**

The fundamental facts of *Sevilleja* are simple. Mr. Sevilleja was the owner and controlling shareholder of
two BVI companies. Marex successful obtaining judgments against the companies: ‘Sevilleja allegedly stripped the companies of their assets, making them insolvent.’[7] Marex, as a major creditor, sued the wrongdoing perpetrated by Sevilleja, while the defendant argued that Marex’s claims merely reflected the companies’ loss. The judge held that “no reflective loss” did not apply to Marex due to its status as an unsecured creditor.[11] On appeal, the court reversed the prior judgment, saying that the claim of Marex, as the creditor of companies, was precluded under “no reflective loss.”[6] citing the assertion of Lord Millet in Johnson, that the principle:

Applies to other payments which would have made ... Even if the plaintiff would have received them qua employee and not qua shareholder and even if he would have had a legal claim to be paid.[8]

The case went to the Supreme Court, where Marex’s appeal was unanimously granted. Three speeches were given: the main judgment (Lord Reed, with whom Lady Black and Lord Lloyd-Jones agreed); Lord Hodge’s (concurring with the majority); and the minority’s (Lord Sales, with Lady Hale and Lord Kitchin).[18] The majority position favoured narrowing the scope of “no reflective loss,” while the minority view favored abolishing it.[7]

Sevilleja reiterates two issues: the scope of the “no reflective loss” principle, and the application of exceptions stemming from Giles v Rhind. In addressing the first question, both the majority and the minority argued that creditors are not covered by “no reflective loss.”[10] For Lord Reed, the amended principle applies ‘specifically to companies and their shareholders’, and has no broader ambit,[11] since ‘there is no correlation between the value of the company's assets or profits and the "value" of the creditor's debt'.[11] Conversely, the minority perspective believes that there is no compelling argument for the continued application of this principle,[11] so it should be abandoned. In the minority view, it should not be further extended to creditors who are not even shareholders.[3]

Another contended point is whether Sevilleja could apply the exception rooted in Giles v Rhind. Lord Reed, believing that exception was wrongly decided, argued that such an exception was not viable. His Lordship’s view was that ‘the shareholder has not suffered a loss which is regarded by the law as being separate and distinct from the company’s loss.’[6] This influenced the majority decision that there could be no exception to the principle, even if the defendant’s wrongful conduct has left the company in financial distress and unable to file a claim on its own. The shareholder may only pursue the claim through a derivative action or unfair prejudice claim.[19]

Since then, the “no reflective loss” principle has largely returned to its original form, evident in Prudential.[20] Its narrow application is considered to be unjust, which is why the minority thought it should be abandoned. Lord Sales saw no value in framing “no reflective loss,” assuming one exists, as a bright line test of company law, arguing that courts had various tools at their disposal to avert injustice.[21] The minority position is that even if “no reflective loss” is discarded, the legal system would thrive.

Unfortunately, although Sevilleja improved the “no reflective loss” principle, and made its scope of application more reasonable, it ultimately took the principle backwards.[10] Sevilleja is not sufficiently clear in its consideration of many issues about this principle that still need to be addressed. The discussion of these will be the focus in next section.

3. The Flawed Policy Considerations

In Johnson, Lord Millet argued: “the disallowance of the shareholder's claim in respect of reflective loss is driven by policy considerations.”[6] This was the source of the four grounds made by the Court of Appeal in Sevilleja for the "no reflective loss" principle. As a number of these policy considerations are flawed,[13] correcting those flaws would give the principle a brighter future. The following subsections are compartmentalized to analyse how to correct these flaws.

(1) Double recovery

Lord Millet helpfully addressed his concerns about double recovery succinctly in Johnson, in which he stated:

If a shareholder is allowed to recover in respect of such loss, then either there will be double recovery at the expense of the defendant or the shareholder will recover at the expense of the company and its creditors and other shareholders. Neither course can be permitted.

[6]

Conversely, Lord Reed in Sevilleja refuted the concept that "no reflective loss" was founded on the need to avoid double recovery.[22] In his opinion, double recovery is premised on the recognition of double losses, whereas he held that the shareholder had not suffered a personal loss. Therefore, in Lord Reed's view, double recovery is not eligible to be covered by the principle.

Double recovery is undeniably an issue that requires further attention from the courts, but can be addressed by procedural or substantive means without resorting to reflective loss.[22] For example, a majority shareholder may often compel the company to act by adopting a relevant resolution at a general meeting,[22] for a minority shareholder, he may apply to the court for a relief against unfair prejudice that is detrimental for petitioning shareholder’s interest,[23] or bring a derivation action.

Reconsidering the question about the test in Johnson from Part B (2), the correlation between the company’s loss and the diminution in the value of its shares has not yet been confirmed. In the Johnson case, though the reflective loss test is predicated on the notion that the former is reflected in the latter, these two values may not be identical. In Lord Millett’s opinion, in companies where shares were publicly traded, the value of the shares were determined by 'market sentiment' and,
as such, their correspondence may be inaccurate,[6] yet for small private companies, the correspondence was exact.[6] The reason for this occurrence is clear: for instance, Joyce Lee Suet Lin noted that in the case of a listed company, if the market, after a comprehensive assessment, concluded that the wrongdoer had sufficient solvency to cover the company's losses, its value of shares would not be adversely affected.

Yet even for private companies, the correspondence is not always accurate, as Lord Millet had assumed. Lord Justice Waller in Gile v Rhind referred that the share value reflected the business potential of the company from the side.[15] For instance, a reduction in the value of the company's property may affect other's perceptions of its business development potential, and may damage its reputation, potentially resulting in lowered share value. Due to imprecision of correspondence, the question in Part B (2) has remained unresolved until now, because Lord Reed reaffirmed the approach adopted by Lord Bingham in Johnson.[11]

Since the company's loss and the diminution in the value of shares are not in perfect correspondence, introducing double recovery will complicate the principle. If the relationship between the two is not one-to-one, the threat arises that shareholder will not be fully compensated for their losses. Furthermore, the inexact correspondence emphasizes that the majority’s argument in Sevilleja - that the shareholder did not suffer personal loss - is untenable.

Thirdly, a hypothetical situation exists where a shareholder may dispose of his shares at an extremely low price, and recover them via a personal claim.[13] The company may also bring an action and make a recovery.[13] As this ex-shareholder is no longer with the company, he would not profit from the increase in the value of the company's shares upon recovery.

(2) Causation
Another flaw is the issue of causation. If the company chooses not to pursue a claim against the wrongdoer, the claimant-shareholder suffers loss as a result of the company’s choice, not the defendant’s delicts.[6] However, this consideration is fundamentally wrong: in the example of Gile v Rhind, the company was unable to sue the wrongdoer because of his offences. Here, the shareholder's loss arises from the company’s inaction, not from the company’s inaction.[11]

Even in the case of Sevilleja, Marex's claim against Sevilleja was premised on the fact that Sevilleja had intended to cause Marex’s loss. In this category of cases, it seems unusual and unviable to assert that the effect the defendant sought, and which indeed occurred, was not caused by the wrongdoer's actions.[11]

(3) Promotes settlement
Another flaw of this policy is that it promotes settlement. ‘Avoid[ing] conflicts of interest’ is central to this policy consideration, yet if the claimant had a separate right to sue, it would deter the company from settling’. In cases engaging the "no reflective loss" principle, there are two main facets pertaining to conflicts of interest: ‘conflicts between shareholders and directors’ (Conflict (1)) and ‘[those] between shareholders and liquidator[s], who represent the interests of the creditors’ (Conflict (2)).[10]

Concerning Conflict (1), Lord Millett assumed a scenario where 'the directors were also the shareholders', and they would attempt to cope with the company's claim at a discount or abandon it altogether in order to collect the remaining losses for their own benefit.[6] However, both the majority and the minority in Sevilleja viewed this consideration as inappropriate.[10] The problem they found is that company law has a procedure for dealing with similar conflicts of interest, and duty on the part of directors does not constitute sufficient grounds for removing a shareholder's cause of action.[11] For instance, according to the Companies Act 2006, the directors have a duty of care and diligence, so there is no need to seek a new protective mechanism such as the "no reflective loss" principle.[24] Concerning Conflict (2), in these circumstances, the defendant can still be entitled to enter into a settlement with the liquidator of the company, and the liquidator lacks adequate reasons to overturn the shareholder's rights to bring an action.[11]

As neither Conflict (1) nor Conflict (2) provide an ideal rationale for the "no reflective loss" principle, can this principle really facilitate reconciliation between the company and the wrongdoer, as envisaged? The answer is certainly not. Allowing the shareholder to pursue his own personal claims may encourage the wrongdoer to settle with the company and limit his entire liability to the company,[11] and the amount of compensation offered by the wrongdoer will be sufficient to recompense the company and shareholders for their losses (or nearly so), without the need to resort to lengthy and complex legal proceedings.

(4) Autonomy of company’s governance and protection of creditors and co-shareholders

(a) Preserve the autonomy of company’s governance

In Foss v Harbottle, the 'majority rule' was introduced,[10] which states that shareholders who have invested in a company have thereby accepted the fact that the affairs of the company are governed by the decision-making body provided for in the articles of association,[11] such as the 'majority of members voting in general meeting or the board of directors'.[10] The flaws of this policy consideration potentially distort this.

Consequently, shareholders are not entitled to pursue a personal action, as they are obliged to follow the majority decision. In relation to Lord Bingham’s assertion that 'the court must respect the principle of company autonomy',[6] the "no reflective loss" principle emphasises this rule. However, why does it follow that a shareholder can never bring a personal action, even if the company does not bring a claim against the
wrongdoer? As Lord Sales argued, the shareholder's claim is not covered by the rule in *Foss v Harbottle*, since there is no reason to apply a collective decision-making process when the company has control over how to deal with any cause of action.\textsuperscript{11}

\textbf{(b) Protect creditors and co-shareholders}

Lord Millett in *Johnson* remarked that to protect the interests of the company's creditors, the company must be allowed to recover to the exclusion of shareholders.\textsuperscript{10} Upon first glance, this argument seems logical: if the company falls bankrupt as a consequence of wrongdoers, creditors will profit from the company's action as it will expand the 'pool of assets available for distribution' to creditors.\textsuperscript{25} When a shareholder is permitted to recover reflective loss in a personal action, the company's claim may thereafter be compromised, which will disrupt the 'ranking of claims by creditors and shareholders in insolvency'.\textsuperscript{125} However, as the 'shareholders are separate from the company' and have dissimilar rights and obligations, creditors may only 'collect from or claim against assets which rightfully belong to the company' in any event.\textsuperscript{26} Therefore, the argument that the individual rights of shareholders should be subordinated to protect the interests of the company's creditors seems less convincing if the cause of action properly pursued belongs to the individual shareholder himself.\textsuperscript{26}

What if the company is still solvent? In this circumstance, the creditors have no right to participate in the internal affairs of the company or interfere in the company's right to bring an action,\textsuperscript{13} so this policy consideration does not provide strong support for the application of this principle when the company is solvent.

The protection of co-shareholders is also another policy consideration articulated by Lord Millett.\textsuperscript{11} From the standpoint of all shareholders, corporate action is beneficial to them all, by deterring recovery by particular shareholders at the cost of others.\textsuperscript{26} On the other hand, Pearlie Koh pointed out that if all other shareholders are defendants, or the company has just one shareholder, there is no necessity to safeguard other shareholders' interests.\textsuperscript{26}

To summarise, these flawed policy considerations do not fundamentally support the validity and fairness of the existence of the "no reflective loss" principle. The rigid bar on claims brought by shareholders is, in this sense, unfair to shareholders. Therefore, the "priority rule" introduced by Alan K. Koh is more applicable. The following section analyzes the applicability of the "priority rule."

\textbf{4. The "Priority Rule"}

As discussed in Part C and Part D, "no reflective loss" is highly problematic in theory and practice, and even after Sevilleja, the situation has not fundamentally improved. The "priority rule", named by Alan K. Koh, is a viable direction for improvement, as it overcomes the shortcomings of the policy considerations of "no reflective loss" analysed in Part C, and better balances the interests of all parties involved.

\textbf{(1) The operation of "priority rule"}

When a company suffers wrongdoing, shareholders have two options, either they choose to remain with the company, but choose to bring a personal lawsuit (a), or they resell their shares at a low price and exit the company (b). These two situations should be dealt with separately.

\textbf{(a) The shareholder remains in the company}

Given the relevance of respecting corporate governance autonomy, the foundation of this rule is to give credit to the effectiveness of the company's internal governance within the limits of fairness and validity.\textsuperscript{13} In the first scenario when the shareholder wishes not to leave the company,\textsuperscript{13} according to Alan K. Koh, the rule is divided into two steps:

(i) When a shareholder chooses to bring an action for his reflective loss, he is obliged to first inform the company of his intentions. If the company decides to commence a cause of action against the wrongdoer or settle with him, or the company has not acted for a period of time (for example, 60 days), the shareholder cannot sue the wrongdoer in his own name.

(ii) If the company refuses to bring an action or settle with the wrongdoer, the shareholder is free to act. Or, if the company brings an action or settles a claim against the offender, but does not obtain full compensation for its claim, the shareholder may only be compensated for the shortfall in its compensation.\textsuperscript{13}

One exception exists: when a company takes action beyond the expiration of the notification period and after the shareholder has brought a personal action, the court often joins the two cases together, to better adjudicate cases and avoid information asymmetry between different judges.\textsuperscript{26} In such cases, the issue of double recovery is one that judges need to deeply consider.

In Alan K. Koh's perspective, there are two choices for the court. Firstly, the court may allow the company to be fully indemnified and permanently dismiss the shareholder's personal litigation.\textsuperscript{13} However, this approach is somewhat unfair as it is the shareholder who first brought the individual action, and the company failed to act in a timely manner: therefore, the court should dismiss the company's action rather than the shareholder's personal recovery. Secondly, the company recoups a loss less than the shareholder's *pro rata* sharing.\textsuperscript{13} Again, however, it would not be reasonable in such circumstances to require the shareholder to bear the costs of litigation because of the company's previous inaction. After all, the company has an independent legal personality, as do the shareholders, and they are both equal civil law subjects, so the law cannot afford to over-protect a company from liability for abusing its rights. It should therefore be provided...
that if the company does not bring an action following a period of notice, its right should be deemed to be waived by tacit consent, and the court should not permit the company to bring another action to recover losses for the same wrongful act after the shareholder has commenced the proceedings.

(b) The shareholder exists the company

The second scenario considers another possibility, where the shareholder chooses to leave the company,[13] for example in the instance that the shareholder has sold shares at a low price to a buyer that reflects the losses. When the exit process is complete, this shareholder is completely disengaged from the company and now he is the ex-shareholder. Then, he is entitled to bring an action against the wrongdoer for the loss of price incurred by him in selling the shares at an undervalue. Yet two questions arise as to whether the company and the new shareholders will still be able to bring the action.

For the company, the answer is fundamentally 'yes', as it has also suffered real losses. However, the shareholding of the ex-shareholder should be deducted. For example, if the ex-shareholder owned twenty per cent of the shares, the company now can only recover eighty per cent of the 'total assessed loss' resulting from the wrongful act.[13] The company is not allowed to recover this portion of the loss even if the ex-shareholder never files a lawsuit, in order to prevent a possible double recovery.

For the new shareholder, the answer is fundamentally 'no', as he has not suffered the loss. If the company is successful in recovering the losses suffered, the share price will rise and the new shareholder will benefit.

(2) Can the rule be excluded by contract?

Even regarding the "no reflective loss" principle, this question also applies. If the shareholder expressly states that he will waive this right, will his statement be recognised by the court? At present, the validity of such undertakings is unclear, and an ostensible absence of such rights may have unforeseen consequences.[21] The argument in this essay is in favour of recognising this commitment by shareholders, since they can renounce their right of action and there is no reason why the court should deny them this right. After the rule has been excluded by contract, in the second scenario, the ex-shareholder can also not sue the wrongdoer because he has forfeited his cause of action when he was a shareholder.

5. Conclusion

The principle of "No reflective loss" is an obstacle for shareholders to recover their loss, especially when the company fails to recover in full.[6] Introduced in Prudential, developed in Johnson, the scope of application of "no reflective loss" had extended to the point of being unreasonable. Although Sevilleja, narrowed that scope, its fundamentalism brought other issues. Ultimately, the policy considerations behind the principle are fundamentally and theoretically flawed, which is why the minority in Sevilleja decided to abandon it.

Because of these poor policy considerations, the "priority rule" is more appropriate to deal with cases concerning reflective loss. The "Priority rule" not only protects the autonomy of corporate governance, but also protects the interests of shareholders who are overlooked in "no reflective loss" principle and also prevents the problem of double recovery, so the future of this principle is brighter than that of "no reflective loss."

Although this essay has discussed the "priority rule" mainly in two scenarios, there are certainly some refinements to applying it in practice. Further studies should be carried out on a practical level, relating to specific cases, by implementing this principle in existing cases. In any case, the "priority rule" principle is considerably clearer and more viable for cases that include reflective loss.

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