New York University School of Law
Master of Comparative Jurisprudence

THE CORPORATE ENTITY

AND

PIERCING THE CORPORATE VEIL

Thesis by:

Marcos Ibarguen S.
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THE CORPORATE ENTITY AND PIERCING THE CORPORATE VEIL

Lic. Marcos Ibargüen Segovia

I. A GENERAL LOOK AT THE CONCEPT OF PIERCING THE CORPORATE VEIL AND SCOPE OF THE THESIS

There are many words and confusing adjectives used over and over again by courts to describe the equity remedy by which the mantle of the corporate entity is ignored and liability is imposed directly to its shareholders[1]. The mere exercise of such judicial power seems, if not arbitrary, quite confusing and its extremely difficult to extract the contours of a general case law on the subject. Some important factors on why this area of corporate law is so confusing are:

First, because one of the fundamental principles of Corporate Law is the legal entity fiction separate from its shareholders[2]. The entity fiction is clearly advantageous as a

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[1] To name a few: "Mere adjunct", "agent", "alias", "alter ego", "alter idemm", "arm", "blind", "branch", "buffer", "cloack", "coat", "corporate double", "cover", "creature", "curious reminiscence", "delusion", "department", "dry shell", "dummy", "fiction", "form", "formality", "fraud on the law", "instrumentality", "mouthpiece", "name", "nominal identity", "pawn", phrase", "puppet", "screen", "sham", "simulacrum", "snare", "stooge", "subterfuge", "tool". See Harry C. Henn. CORPORATIONS, CASES AND MATERIALS (1974) at 243.

[2] See Cathy S. Krendl and James R. Krendl, PIERCING THE CORPORATE VEIL: FOCUSING ON THE INQUIRY, 55 Den. L.J. 1. (1978) at 1-2 "This tenet is based on the theory that the corporation is an artificial entity, separate from the shareholders. Further, it is based on the economic policy that shareholders should be encouraged to commit limited amounts of capital to an endevaor which might be too risky for direct individual involvement [and]

business incentive, by limiting the risks of enterprises and thus attracting passive equity investment[3]. Therefore the inquiry I am focusing in this work is not whether there should be policy changes and reevaluations regarding the soundness of the legal entity, nor do I pretend to make a useless effort in trying to exhaust the analysis of the tremendously vast case law on the issue, but rather, my main objectives are: to make some sense on the ideas and premises that constitute the reasoning of judges when disregarding the corporate entity; and to extract those circumstances by which individuals or parent corporations take advantage of the corporation vehicle to create great unfairness with third parties that deal with the corporate structure, thus making them susceptible of having a court ignore its corporate separateness.

Second, because the judicial power to disregard the corporate entity is equitable in nature[4], and therefore courts tend to rely heavily on the particular facts[5] of each case, the

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corporate limited liability is fundamental to the law of every jurisdiction in the United Sates".

[3] See Douglas & Shanks, Insulation from Liability Through Subsidiary Corporations, 39 Yale L.J, 193, 194. "[N]o one would claim that the availability of limited liability played an insignificant part in the expansion of indutry and in the growth of trade and commerce. It has had a potent influence. Limited liability is now accepted in theory and in practice. It is ingrained in our economic and legal systems. The social and economic order is arranged accordingly. Our philosophy accepts it. It is legitimate for a man or group of men to stake only a part of their fortune on an enterprise. legislatures, courts and business usage have made it so".

[4] See Kahel v. First Commonwhealth Co., Inc., 409 F.Supp. 1396 (Cal.D.C. 1973) Aff'd, 534 F.2d 194 (Whether the corporate veil is required to be pierced so as to avoid an inequitable result is a matter governed by **equitable considerations**) See also Associated Vendors, Inc. V Oakland Meat Co., 26 Cal.Rptr. 806, 210 C.A.2d. 825 (Cal.App. 1962) (Conditions under which the corporate entity may be disregarded or the corporation be regarded as the alter ego of the stockholders vary according to the circumstances in each case inasmuch as the doctrine is essentially an equitable one); Kugler v. Koscot Interplanetary, Inc., 293 A.2d. 682, 120 N.J.Super. 482 (App.Div. 1972) (Equity will go behind the corporate form where necesary to do justice).

[5] See Alexander v. Abbey of the Chimes 104 Ca3d 39, 163 Cal Rptr. 377 (1980) (The determination of disregarding the corporate entity is ordinarily a question of fact). See also Las Palmas Associates v. Las palmas Center Associates, 1 Cal. Rptr 2d. 301, 235 C.A.3rd 1220 (Cal. App. 2 Dist. 1991) (Rev. Den) (Conditions under which corporate entity may be disregarded vary according to the circumstances of each case).

premise behind each of them being a test of the basic fairness of the transaction that leads to the judicial action.

A third reason, implied by the first two mentioned, is that notwithstanding the fact the law has created useful tools for business (i.e. the legal entity), in every case in which the corporate entity is disregarded there is an underlying unfairness on the transaction attacked and the court is willing to see through a mere legal formality and go directly to the substance.[6] Therefore, it can generally be conceded that the real purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to **"defeat ends of justice, to perpetrate a fraud, to accomplish crime, or otherwise evade the law"**[7].

In light of all the confusion that surrounds the issue of piercing the corporate veil, it is not surprising that there have been several attempts towards establishing a more comprehensible and objective process by which courts may ultimately use their equity powers to disregard the corporate entity and establish liability directly to the shareholders. Yet, as stated above, because of the very nature of piercing the corporate veil, as an

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[6] To put it in Elvin R. Latty's words: "The fancied necessity of 'disregarding the corporate entity' assumes that there is an inconsistency between the existence of the corporation on the one hand and the existence of the stockholders on the other: if we can only deny the one, the other will automatically come into legal view. Likewise, the urge to 'look through' or 'pierce' the entity leads one to believe that the corporate entity is in the nature of an encasement concealing the substance with which one is concerned and that once this cover is made transparent or broken open one can get at the substance. Expressions like the foregoing indicate that, so long as the corporarte entity is regarded, the stockholders by that very fact enjoy a kind of legal oblivion." See Elvin R. Latty. THE CORPORATE ENTITY AS A SOLVENT OF LEGAL PROBLEMS. 34 Michigan L.Rev 597 at 600.

[7] See In re Marriage of Dick, 18 Cal. Rptr. 2d 743, 15 C.A 4th. 144 (Cal.App. 2 Dist. 1993) (Rev. Den.) (If a corporation is used by individual or by another corporation to perpetrate fraud, circumvent a statute, or accomplish aother wrong or inequitable purpose, the court may disregard the corporate entity and treat such acts as if they were done by individuals themselves. See also New Jersey State Department of Environmental Protection v. Ventron Corporation. 468 A.2d. 150, 94 N.J. 473. (NJ S.Ct. 1983)

exception to a fundamental principle -the legal entity fiction[8]- whose policies have never seriously been challenged[9] and therefore the need for Courts to grant it almost reluctantly on decisions in which the particular facts of each case are most heavily weighted, innumerable works and approaches have flourished in this area of the law, of which I merely pretend to scratch the surface of only a few.

II. THE AGENCY THEORY AND INSTRUMENTALITY OR ALTER EGO

Agency Theory

Justice Cardozo is the most important promoter of the agency theory, which was formulated in the landmark case of Berkey v. Third Avenue Railway Company[10] In essence,

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[8] For an interesting aproach to the legal entity theory see Robert W. Hamilton. THE CORPORATE ENTITY. 49 Texas L.Rev. 1009 (1971), where the author concludes: "whether or not [a corporation] should be deemed a separate 'legal entity' or 'legal person' should depend on the question to be resolved. A corporation may be an entity for some purposes and not for others. In such circumstances, to argue that a corporation is an entity, and therefore that certain results follow, is to put the cart before the horse. Analysis, in other words, should be directed not to the nature of corporateness but to the substantive policies underlying the issues.

[9] See Frank H. Easterbrook and Daniel R. Fischel. LIMITED LIABILITY AND THE CORPORATION. 52 U.Chi.L.Rev. 89, were the authors strongly defend the legal entity theory and corresponding limited liability of corporations, pointing out that the latter reduces the costs of separation and specialization of investment and management in at least six ways: (1) By decreasing the need to monitor, since equity investors do not risk more than their original investment. In other words: the more they would risk the more they would monitor; (2) By decreasing the cost of monitoring other shareholders: If limited liability were non existent, the grater the wealth of other shareholder the lower the propability that any one shareholder's assets will be needed to pay a judgment; (3) By promoting free transferability of shares, thus giving managers incentives to act efficiently because of the risk of takeover; (4) By making it possible for market prices to impound additional information about the value of firms, since with unlimited liability shares would not be homogeneous commodities; (5) By allowing efficient diversification: Through diversified portfolios permiting investors to minimize their risks. Under unlimited liability the opposite would occur because no matter how small the investment in any individual firm, liability could reach the investor; and (6) By facilitating optimal investment decisions: Allowing investors to take risks on high variance ventures.

[10] See Berkey v. Third Avenue Railway Company, 244 N.Y. 84, 155 N.E. 58 (N.Y. 1926) (Justice Cardozo, representing the mayority of the Court of Appeals of New York, denied

the theory suggests that in order to avoid "the mists of metaphor"[11] that surround decisions piercing the corporate veil, in cases where "the dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent"[12]. In other words, if the subsidiary has authority to act on behalf of the parent under agency principles, the latter is liable as principal for its agent's acts[13].

Although the theory was formulated under the context of parent-subsidiary relations, the reasoning behind it should analogically apply to cases on which the **principal** is an **individual** or **group of individuals**.[14]

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holding the Parent Railroad Corporation liable for the negligence of Subsidiary -The Manhattanville & Saint Nicholas Avenue Railway Company-, regardeless of the fact that the parent owned susbstantially all the shares of subsidiary and had almost the same directors and officers, as he didn't find enough indicia to hold the subsidiary as the agent of the parent and the test of general fairness of the transaction was not failed).

[11] Id. at 94.

[12] Id. at 95.

[13] A Law Review from the University of Texas states: "[N]o conceptual problems emerge when liability is imposed upon shareholdrs under conventional theories of agency or tort law. To argue that the corporate veil is "pierced" in such cases is both unnecessary and confusing. If the shareholder is acting as a principal in his own name, he is clearly liable on the obligation. Moreover, if the corporation can be considered his agent under accepted principles of agency law, the shareholder-principal is liable on a contract because he is a principal, not because he is a shareholder in a corporation whose veil has been pierced." See PIERCING THE CORPORATE VEIL: FOCUSING THE INQUIRY. 49 Tex. L.Rev. 979 (1971) at 983-984.

[14] See William L. Cary and Melvin Aron Einsenberg. CORPORATIONS, CASES AND MATERIALS. at p. 81: "Although the factual pattern between the two corporate situations is very different, it seems that in general whether we are dealing with a one man company or a parent and subsidiary arrangement, the very same inquiry seems to arise". Another author states the following on the issue: "Some cases suggest that different tests should apply depending on whether the shareholder-defendant is an individual or a corporation. When a corporation is the defendant, only a larger corporate entity is being held responsible for the debt; but when an individual is the defendant, personal liability extending to non-business assets is being imposed. Whatever the merits of this suggestion as a basis for decision, courts are probably more willing to pierce the corporate veil when the defendant is a corporation rather than an individual..."(citations ommited). Id. note 13 supra at 992.

It is further suggested by Justice Cardozo that in cases where control is less obtrusive, Courts should no longer rely on agency principles, but rather on the tests of "honesty and justice"[15]. To put it another way, the objectiveness of the agency principles no longer illuminates the answer when the dominion is less clear. Hence, the problem remains difficult to disentangle, at least in all the cases where such level of dominion and influence has not been established.

Instrumentality or Alter Ego

Under the approach of the instrumentality or alter ego doctrine, Courts have held that where the corporate fiction is merely an alter ego or business conduit of an individual, it may be disregarded in the interest of securing a just determination of an action[16].

According to Jennings and Bausbaum on Corporations, the earliest formulation of the alter ego concepts arose in the setting of more or less consciously evasive, if not fraudulent, efforts to avoid statutory obligations through separate subsidiaries incorporations.[17]

Again, the deceitful or fraudulent element seems to have been the guiding light under the alter ego doctrine. Further, as some authors have suggested[18], not only must the plaintiff prove that the corporation was being utilized illegitimately, he must establish as

15 Id. **Third Avenue Railway Company** supra at 95.

16 See People v. Clauson, 231 Cal.App. 2d 374, 41 Cal Rptr 691 (Cal.App. 2d Dst. 1964). See also Giblin v. Murphy, 97 App. Div. 2d 668, 469 NYS 2d 211 (NY App.Div. 3rd.Dept. 1983).

17 See Richard W. Jennings and Richard M. Buxbaum. CORPORATIONS CASES AND MATERIALS 5th ed. 1979. The authors of the Casebook refer to the following cases as some of the earlier formulations of the instrumentallity or alter ego doctrine: US v. Elgin Joliet & E. Ry. Co. 298 U.S. 492 (1936), US. v South Buffalo Ry. Co., 333 US 771 (1948); US V. Milwaukee Refrigeration Transit Co., 142 F. 247 (1905).

18 See KRENDL note 2 supra, at 2.

well that such corporation functioned under the dominion and control and for the purposes of a dominant party.[19]

In the context of parent-subsidiary relations, another author[20] developed a useful list of circumstances that tend to indicate that the subsidiary is a mere instrumentality:

1.- The parent corporation owns all or most of the capital stock of the subsidiary.
2.- The parent and subsidiary corporations have common directors or officers.
3.- The parent corporation finances the subsidiary.
4.- The parent corporation subscribes to all of the capital stock of the subsidiary or otherwise causes its incorporation.
5.- The subsidiary has grossly inadequate capital.
6.- The parent corporation pays the salaries and other expenses or losses of the subsidiary.
7.- The subsidiary has substantially no business except with the parent corporation, or no assets except the ones conveyed to it by the parent corporation.
8.- In the papers of the parent corporation or in the statements of the officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
9.- The parent corporation uses the property of the subsidiary as its own.
10.- The directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation in the latter's interest.
11.- The formal legal requirements of the subsidiary are not observed.

Clark on Corporate Law[21], refers to the following three tier test typically formulated by Courts when invoking the instrumentality or alter ego doctrine:

(1) Control, not merely majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no

[19] Such dominion must be "something susbtantially more than the control which would be exercised by a majority shareholder or every corporation would be automatically subject to having its veil pierced. Further, the domination, must be domination with repect to the particular transaction attacked as opposed to domination in general." Id. at 3

[20] F. Powell. PARENT SUBSIDIARY CORPORATIONS. Sect. 1 (1931), at 9.

[21] Robert Charles Clark. CORPORATE LAW. (1986) at 37.

separate mind, will or existence of its own;

(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of a plaintiff's legal rights; and

(3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[22]

According to Clark, it is the second part of this test which holds the key factor to the alter ego or instrumentality rule. He contends that such showing must be illuminated by the light of a very well developed area of the Law: The law of fraudulent conveyances[23]

Cases, holdings and discussions of some Important Jurisdictions

Delaware courts have rarely disregarded the corporate entity through the application of the instrumentality or alter ego doctrine[24]. The evolution of the case law in such state has generally required the showing of actual **fraud** in order to justify piercing the corporate veil[25]. Nevertheless, when the showing of the level of dominion and control is such as to

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22 See Zaist v. Olson, 227 A.2d 552,558 (Conn. 1967). See also Wholesale and Retail Food Distribution Local 63 v. Santa Fe Terminal Services, Inc., 826, F.Supp 326 (Cal.D.C. 1993). For a recent New York case on the issue, see Keaton infra, note 33.

23 He states further that this "very ancient" and "still applicable" body of law "applies to relationships between all kinds of debtors (not just corporations) and creditors [which] contain[s] principles and rules that are easy to grasp and that have a fairly definite meaning when applied to real cases. Finally, he concludes that "the best way to predict whether the instrumentality rule has been violated is to ask whether the behaivior pattern in question violates any rules of fraudulent conveyance law." Id. at 38.

24 See Sears Roebuck and Co. v. Jardel Co., 421 F.2d. 1048,1053 (3rd. Cir. 1970).

25 See Pauley Petroleum, Inc. v. Continental Oil Co., 231 A.2d 450,454 (Del. Ch. 1967) aff'd., 239 A.2d 629 (Del. 1968) In this action, the Delawere Court of Chancery held as follows: "The corporate fiction may be disregarded to prevent fraud, and a wholly-owned subsidiary may sometimes be treated as an instrumentality of the parent. And, more recently, this Court said in Stauffer v. Standard Brands Incorporated, 40 Del.Ch. 202, 178 A.1d 311 (1962); aff'd 187 A.2d 78 (1962), 'In the absence of fraud, the separate entity of a corporation is to be recognized'. This principle has been enunciated by all of the courts

consider the corporation an **agent**, such requisite might not be essential. Thus, in Japan Petroleum Co. (Nigeria Ltd.) v. Ashland Oil[26], a federal court using Delaware state law reasoned that while some Delaware cases have stated that a showing of fraud or injustice is a prerequisite to disregard the corporate entity, at least one Delaware case has noted both the agency theory and the instrumentality theory without reference to fraud. Whether an agency relationship exists between a parent corporation and its subsidiary is normally a question of fact. The central factual issue is control i.e., whether the parent corporation dominates the activities of the subsidiary. In order to determine whether or not a sufficient degree of control exists to establish an agency relationship, the Court must look to a wide variety of factors, such as stock ownership, officers and directors, financing, responsibility for day-to-day operations, arrangements for payment of salaries and expenses, and origin of subsidiary's business and assets. However, each of these circumstances individually considered is not enough to hold the corporation as an agent. Moreover, the control must be actual, participatory, and total[27].

California courts have been more willing to disregard the corporate entity under the instrumentality or alter ego theory. They have generally held that the corporate veil will be pierced when there is such a unity of interest and ownership that the separate personalities of

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of this state." See also Terry Apartments v. Associated East Mfg. Co., 373 A.2d 585, 588 (Del. Ch. 1977).

[26] 456 F. Supp. 831 (D. Del 1978). See also Phoenix Canada Oil Co. Ltd. v. Texaco, Inc., 658 F.Supp. 1061,1084 (D.Del. 1987)(There are essentially two general theories of liability under which a parent corporation may be held responsible for the obligations of its subsidiaries. Some courts, using the phrases 'pierce the corporate veil', 'alter ego' or 'instrumentality', have imposed liability on the parent corporation only when there is a showing of fraud or inequity. Other courts have based liability of the parent on the principles of agency, without reference to fraud or inequity.).

[27] Id. at 840-841.

the corporation and individual no longer exist, and only when an inequitable result will follow if the entity is not disregarded. In addition, the issue is not so much whether, for all purposes, the corporation is the alter ego of its stockholders or officers, or whether the very purpose of organization of the corporation was to defraud the plaintiff, but whether, in the particular case presented and for the particular purposes of such case, justice and equity can best be accomplished and fraud and unfairness defeated.[28] Contrary to the law of Delaware, actual showing of fraud in California cases is not required[29].

New Jersey Courts disregard the corporate entity when it is an alter ego of its shareholders and there is such unity of interest and ownership that separate personalities of the corporation and its shareholders no longer exist, and adherence to the doctrine of the corporate entity would promote injustice or protect a fraud[30]. Further, New Jersey courts have defined the "equitable fraud" which will permit piercing of the corporate veil as: all acts, omissions or concealments which involve a breach of a legal or equitable duty, trust or confidence justly reposed, and which are injurious to another, or by which an undue or unconscientious advantage is taken of another[31].

A New York case relates the evolution of the agency and the Instrumentality or alter ego theories in such state as follows:

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[28] See Mid-Century Insuarance Company v. Gardner, 11 Cal. Rptr.2d 918, 9 C.A.4th. 1205 (Cal. App. 3.Dist. 1992).

[29] See Platt v. Billingsley, 44 Cal.Rptr. 476, 234 C.A.2d. 577 (Cal.App 1965) (Alter ego doctrine does not depend upon the presence of actual fraud but is fashioned to prevent that which would result in fraud or injustice). See also Engineering Service Corporation v. Longridge Investment Company, 314 P.2d 563, 153 C.A.2d 404 (Cal.App. 1957) (Application of the alter ego doctrine does not depend upon plea or proof of fraud, and it is enough if the recognition of the two eintities as separate would result in an injustice).

[30] Matter of Velis, 123 B.R. 497 (N.J. 1991).

[31] Macfadden v. Macfadden, 139 A.2d 774, 49 N.J.Super. 356 (App.Div. 1958).

> New York courts have advanced a variety of theories to define the particular circumstances and factors which justify disregard of the corporate entity. Some have applied the theory of agency, holding that a corporation may be so dominated and controlled by its stockholders as to become a mere agent, acting for the stockholders as principals... But the agency theory is not always available and as Mr. Justice Dore explained in Lowendahld v. Baltimore & O.R. Co., 247 App. Div. 144, 287 N.Y.S. 62, Aff'd, 272 N.Y. 360, 6 N.E.2d 56 (1936), "any severely logical application of agency rules would destroy the protection afforded stockholders by incorporation." For if all systems of control exercised over a corporation by those who own it are illegal, then "the rule of the separate entity and responsibility of corporations for their own acts and contracts is swallowed up in the exception." This is particularly true when the corporation is owned and controlled by one or two persons. Thus, except in case of express agency, estoppel, or tort, Lowendahl advanced the so called "instrumentality" rule. While this rule emerged in the parent subsidiary context, some of the same criteria have been carried over in determining whether to pierce the corporate veil in other contexts...(citations omitted)[32]

A recent New York opinion by the Third Department of the Appellate Division, summarizes the general principles guiding the application of the alter ego or instrumentality rule in this way: "The relevant factors to consider in making this determination are: (1) domination and control over [the] corporation by those held liable which is so complete that the corporation has no separate mind, will or existence of its own; (2) use of this domination and control to commit fraud or wrong or any other dishonest or unjust act; and (3) injury or unjust loss resulting to plaintiff from said control or wrong."[33]

[32] Brunswick Corporation v. Waxman, 459 F.Supp. 1222 at 1228-1229 (D.C.E.D N.Y. 1978)

[33] New York Association for Retarded Children Inc. v Keaton, No. 68629, 1993 N.Y.App.Div. WL 539770 at *2 (3rd.Dept., Dec. 30, 1993). (In this case, the defendant and other investors purchased the technology for a product known as coloreader, a device designed to assist those with impaired sight to read printed matter. They latter formed a corporation called Eyetronics, Inc., applied for a patent and marketed the devises. Eventually, Eyetronics entered into a contract with the plaintiff, the latter agreeing to manufacture for defendants, 50 of such devises. Eventually, Eyetronics failed to pay for the coloreaders and

III. THE UNDERCAPITALIZATION ELEMENT

There are some cases dealing with piercing the corporate veil, which state an alleged policy that corporations must be adequately or reasonably capitalized[34]. Such undercapitalization might occur initially, at the time of incorporation or periodically, by syphoning of funds. The end effect being the same in both cases, i.e. leaving the corporation with insufficient funds to cover corporate indebtedness. This "policy" seems at odds with modern business corporation statutes (especially in cases of initial undercapitalization) because they don't usually require that any significant amount of equity capital be invested as precondition of doing business in the corporate form.[35] Yet some authors have given the undercapitalization factor a preeminent importance when considering the topic of disregarding the corporate entity especially in the context of parent-subsidiary relations.[36]

A leading California Case

plaintiff sued defendant and defendant's company, alleging, among other things, that the corporate entity should be disregarded). See also Bowles v. Errico, 163 A.D.2d 771,773, 558 NYS 2d 734,736 (N.Y. App.Div. 3rd. Dept 1990) and 13 N.Y. Jur. 2d, Business Relationships, s 26, at 289.

[34] See generally, Posner. THE RIGHTS OF CREDITORS OF AFFILIATED CORPORATIONS. 43 U. Chi. L. Rev. 499 (1976)

[35] See Clark, note 21 supra, at 67. The author further states that before, state statutes did have substantial capitalization requirements, arguing further that "such shift in the law suggests that shareholders should not be penalized merely because they took advantage of the statutory permission by putting up a minimal amount of capital."

[36] See Douglas & Shanks. INSULATION FROM LIABILITY THROUGH SUBSIDIARY CORPORATIONS. 39 Yale L.J. 193, at 218 "the adequacy or inadequacy of the capital and financial arrangements of the subsidiary weigh heavily in the determination of liability or non-lability of the parent, greatly overshadowing the other so called indicia of identity between the companies such as common officers, directors, office and lack of separate books."

In Minton V. Cavaney[37] the Supreme Court of California gave significant weight in this tort action to the fact that the corporation was undercapitalized when piercing the corporate veil. In doing so it stated: "the evidence is undisputed that there was no attempt to provide adequate capitalization. Seminole [the pierced corporation] never had any substantial assets. It leased the pool that it operated, and the lease was forfeited for failure to pay the rent. Its capital was 'trifling' compared with the business to be done and the risks of loss"[38].

IV. ENTERPRISE ENTITY THEORY

This theory was originated by Berle in a famous law review article[39]. Basically, the theory suggests that, whenever the corporate entity is challenged, the courts should look at the enterprise or economic unit as a whole. Where the enterprise as such would be illegal or against public policy for individuals to conduct, that enterprise should be equally illegal when carried on by a corporation, and the corporate form must not be a protection. As the author states, "this is, in essence, not so much a disregard of the Corporate fiction as it is a holding that the economic enterprise, whether corporate or non-corporate, is illegal, or criminal, or in violation of public policy, or fraudulent, or otherwise objectionable, as the case may be"[40]. Thus, the nature of the enterprise determines the result, negativing the

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37 Minton v. Cavaney, 15 Cal Rptr 641, 364 P.2d 473 (1961).

38 See also Remme v. Herzong, 35 Cal.Rptr. 586, 222 C.A.2d 863 (Cal.App. 1963) (Undercapitalization is a factor to be considered in determining whether the corporate veil should be pierced). But See Schoenberg v. Benner, 59 Cal.Rptr. 359, 251 C.A.2d. 154 (Cal. App. 1967) (Neither unity of interest nor **undercapitalization** alone are suficient grounds to disregard the corporate entity, in addition to such factors there must be a showing of fraud or injustice as well).

39 Berle. THE ENTERPRISE ENTITY THEORY. 47 Colum. Law Rev. 343 (1947).

40 Id. at 354

corporate personality or any other form of organization of that enterprise.

If the enterprise is not reflected and comprehended by the corporate papers, books, and operation and does not coincide with the formalistic corporate unit, the court may reconstruct the actual enterprise, giving entity to it, based on the economic facts. Therefore one corporation may be shown to be in fact only an "instrumentality" of a larger enterprise, or to be so intermingled with the operations of such larger enterprise as to have lost its own identity. Of such reconstruction of the true entity, the court may assign the liabilities of the "paper fragment" to the economic whole; "or may [...] assign priority or subordination to its liabilities or securities stock, so as to attain, as nearly as possible, a financial result corresponding to the reasonable expectations of the creditors and security holders"[41].

It is interesting to point out, how the author relies on previously developed theories used when disregarding the corporate entity (i.e. alter ego or instrumentality, the fraudulent element and equitable subordination[42]) and cleverly uses them to support his thesis: To look at the economic unity or enterprise as the guiding factor. Berle is not really attacking the existence of limited liability, but rather, he is focusing on a particular characteristic of the corporate structures of the twentieth century, that is, the creation of many subsidiaries in the same business, controlled and owned by the same person or group of persons, for the purpose of isolating liability of the enterprise or business as a whole. Notwithstanding the apparent objectiveness of the theory for the particular situations to which it is addressed, it is not without a line of strong criticism against it[43].

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[41] Id. at 354.

[42] See sect. B.7 infra.

[43] For example, see Easterbrook and Fischel. LIMITED LIABILITY AND THE CORPORATION. 52 U.Chi.L.Rev. 89 (1985) 111. Attacking the Enterprise Theory of Berle: "[Parent corporations should not always] be liable for the debts of those in which they hold stock. Far from it. Such general liability would give unaffiliated firms a competitive advantage. Think of the taxicab business. Taxi firms may incorporate each cab or put just afew cabs in

A Landmark New York Case

Probably the best known case where the concept of the enterprise entity theory came into play, but was nonetheless rejected by the Court of Appeals of New York, was Walkovszky v. Carlton[44]. In this case the defendant, Carlton, was the dominant stockholder of 10 corporations, each of them owning two taxicabs. Walkovszky -plaintiff- was severely injured when he was run down by a taxicab owned by the Seon Cab Corporation (one of the ten). The tort action claimed, among other things, that the corporations where oprated as a single entity, unit and enterprise. As declared by the court, the cause of action as stated by plaintiff, wrongly asserted the alter ego doctrine to pierce the corporate veil, since he was ultimately seeking to hold the entire taxicab enterprise liable, to which the court reasoned: "it is one thing to assert that a corporation is a fragment of a larger corporate combine which actually conducts the business. It is quite another to claim that the corporation is a dummy for its individual stockholders who are in reality carrying on the business in their personal capacities for puerely personal rather than corporate ends." The court then refused to disregard the corporate entity, rejecting further arguments by the plaintiff that the corporations where intentionally undercapitalized so as to minimize liability. It is interesting to point out that the New York Court of Appeals didn't directly reject the enterprise entity theory but rather, refused to pierce the corporate veil under a normal alter ego attack. May be

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a firm. If courts routineley pierced this arrangement and put the assets of the full venture at risk for the accidents of each cab, the 'true' single-cab firms would have lower costs of operation because they alone could cut off liability. That would create a perverse incentive because, as we have emphasized, larger firms are apt to carry more insurance. Potential victims of torts would not gain from a legal rule that promoted corporate disintegration. As a result, courts properly disregard the corporate form only when the corporate arrangement has increased risks over what they would be if firms generally were organized as separate ventures."

[44] 18 N.Y.2d 414, 276 N.Y.S.2d 585, 223 N.E.2d 6 (N.Y. 1966).

the result would have been different if plaintiff's cause of action would have been based on the the enterprise entity theory.

Some view this case as a mayor set back to the alter ego doctrine[45] in New York state. Nevertheless, another important factor which was most heavily considered by the Court of Appeals was that each of the ten corporations carried the minimum liability insurance as prescribed by the New York legislature for such corporations at the time. Thus, the court might have felt that since the sate legislature had already prescribed on the issue, it had set the policy and limits of liability for corporations in the taxi business, and it is not the role of the judiciary to question state policies of the legilsature.

An Earlier Supreme Court of the United States Case

Earlier, the Supreme Court of the United States had also come upon the issue of the Enterprise Entity Theory, But in this intance, the result was different. The case was National Labor Relations Board v. Deena Artware, Inc.[46] Respondant Deena Artware had violated the National Labors Relations Act by discharging and refusing to reinstate 66 employees who had engaged in a strike. Weiner, another respondant, created a series of corporations whose shares were all woned by Deena Products -another corporation-. Furthermore, Weiner owned substantially all shares of Deena Products and was also president and treasurer of all the corporations, including respondent, Deena Artware. Through what seems to be a fraudulent dealing, Artware gave Products a promissory note secured by a mortage, and Artware also gave Products an assignment in partial satisfaction of its indebtedness, thus leaving respondant corporation grossly undercapitalized and unable to cope against any

[45] See CLARK. Id note 21 supra, at 84. "We might be tempted to conclude, then, that the court's opinion [in Walkovszki] ammounts to a rejection of the piercing lawsuit in New York"

[46] 361 U.S. 398 (1960).

liability owed to the workers. Among other allegations, petitioner stated that the operation of these various corporations constituted a single enterprise. In considering the Enterprise Theory, Justice Douglas, delivering the mayority's opinion, stated:

> "Apart from [other considerations] is the question whether in fact the economic enterprise is one, the corporate forms being largely paper arrangements that do not reflect the business realities. One company may in fact be operated as a division of another; one may be only a shell, inadequately financed; the affairs of the group may be so intermingled that no distinct corporate lines are maintained. These are some, though by no means all, of the relevant considerations, as the authorities recognize" -the court here cited Berle-(other citations ommited)[47].

Although the court recognized that this opinion was not sanctioning the theory[48], as it was not deciding the merits of the case, it is nonetheless significant to note that it did, in fact, give it significant weight.

V. A PROPOSED ECONOMICAL APPROACH TO THE PROBLEM

This approach, from the University of Chicago school of thought, has been presented by Frank H. Easterbrook and Daniel R. Fischel in the law review article called "Limited Liability and the Corporation"[49]. The theory recognizes the need for courts to be able to

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47 Id. at 403-404.

48 On this matter, Justice Douglas said: "We do not intimate an opinion on the merits of this alternative theory of liability. The authorities we have cited merely indicate the range of inquiry which the petition of the Board presented..." Id. at 404.

49 Easterbrook and Fischel. LIMITED LIABILITY AND THE CORPORATION. 52 U.Chi.L.Rev. 89 (1985).

pierce the corporate veil in instances where it reasonable under a cost-benefit analysis[50]. To a certain extent, it seems analogous to the breach efficiency reasoning of contract law in that the status quo of a contract relationship (the corporation, its shareholders and creditors in the case of the former situation) is **disregarded** in leu of an economically sounder or less costly path of action[51].

The idea is developed further by giving reasons on why the value of the firm might be maximized if creditors bear a substantial portion of the risk of business failure and thus, why it is usually sounder from an economical analysis, to grant limited liability to corporations. It also states the many possibilities that can be contracted out in corporate-debtor and creditor relationships, concluding that courts should only resort to piercing the corporate veil in situations where the incentive to engage in excessively risky activities is the greatest and that other legal rules, such as managerial liability, minimum-capitalization requirements, and monetary insurance, can also be understood as attempts to reduce the social costs of limited liability.

VI. EQUITABLE SUBORDINATION.

The idea of equitable subordination has been developed in the context of bankruptcy proceedings against insolvent corporations by attempting to hold shareholders or insiders

[50] As the authors state: "the various formulations [on piercing the corporate veil] that have been advanced by courts can be understood, at least roughly, as attempts to balance the benefits of limited liability against the costs associated with excessive risk taking. Id. at 92.

[51] Although it must be pointed out that it varies significantly in some other aspects, especially with regard to the fact that in the case of piercing the corporate veil, creditors cannot take direct action against shareholders without the intervention of a court, while in a contract breach-efficiency case, one of the parties unilateraly decides to breach the contract and the only possible intervention of the court is concerning the establishment of damages for such breach, which, as the theory goes, should be less than the actual cost of performance and thus the incentive to breach.

liable for corporate indebtedness, but not by a direct disregard of the insolvent's corporate identity, but rather, by **subordinating** otherwise valuable claims of shareholders and/or insiders against the said corporation. Although formally speaking it is something different than piercing, as will be shown below, the reasoning is similar, the evil at hand is the same, and the practical effect of either approach is to allocate the loss on the shareholders and not on creditors.

As Cary on Corporations states[52], In may cases the creditors or other security holders of an insolvent corporation, which is being liquidated or reorganized in receivership or bankruptcy proceedings, instead of attempting to hold the sole or controlling shareholder personally liable for the subsidiary's debts, seek merely to have the court deny such shareholder the right to enforce a claim as creditor or secured creditor of the insolvent corporation. Thus, third parties do not seek a true disregard of the corporate entity, but a priority over a claim asserted by a controlling person. The subordination is not automatic but is said to turn on the presence of fraudulent conduct by the insiders or mismanagement of the insolvent corporation, typically coupled with **inadequate capitalization**[53]. Most of the cases arise under the bankruptcy act and the Supreme Court of the United States, in administering that act, has evolved the so-called Deep Rock Doctrine[54].

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52 See William L. Cary and Melvin Aron Einsenberg. CORPORATIONS, CASES AND MATERIALS.

53 See part III of this work infra.

54 The **deep rock doctrine** of equitable subordination was developed in the Supre Court case Pepper v. Litton, 308 US. 295,308 (1939) by Justice Douglas who expressed the majority vote in that case. In this banktrupcy proceeding, the US supreme Court held that "[subordination of banktrupcy debts is applicable] where on the facts the bankrupt has been used merely as a corporate pocket of the dominant stockholder, who, with disregard of the substance or form of corporate management, has treated its affairs as his own. And so-called loans or advances by the dominant or controlling stockholder will be subordinated to claims of other creditors and thus treated in effect as capital contributions by the stockholder not only in the foregoing types of situations but also where the paid-in capital is purely nominal, the capital necessary for the scope and magnitude of the operations in the company being furnished by the stockholder as loan."

VII. CONTRACT AND TORT CREDITORS

Generally, Courts do not consciously differentiate the analysis between actions to pierce the corporate veil by tort creditors or contract creditors[55]. According to a Texas Law Review article[56], "it is atonishing to find that this fundamental distinction is only dimly percieved by many courts, which indiscriminately cite and purport to apply, tort precedents in contract cases and vice versa."

The same Law Review offers the following discussion, on the assumption that policy considerations in each case are different and thus, results should not allways be the same:

> A major consideration in determining whether the shareholders or the third party should bear the loss is whether it is an involuntary creditor, typically a tort claimant. In a contract case, the plaintiff has usually dealt in some way with the corporation and should be aware that the corporation lacks substance. In the absence of some sort of deception, the creditor more or less assumed the risk of loss when he dealt with a "shell"; if he was concerned, he should have insisted that some solvent third person guarantee the performance by the corporation. In tort cases, on the other hand, there is usually no element of voluntary dealing, and the question is whether it is reasonable for businessmen to transfer a risk of loss or injury to members of the general public through the device of conducting business in the name of a corproation that may be marginally financed. The issues of public policy raised by tort claims bear little relationship to the issues raised by a contract claim.[57] (citations omited).

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[55] According to California law, for example, the alter ego doctrine applies to tort claims against a corporation, as well as to contractual debts. See Minton v. Cavaney, 346 P.2d. 473, 15 Cal.Rptr. 641, 56 C.2d. 576 (1961).

[56] See PIERCING THE CORPRATE VEIL: FOCUSING ON THE INQUIRY. 49 Tex. L.Rev. 979 (1971) at 983.

[57] Id. at 984-985.

Although the substance of the foregoing argument is convincing, it is rather presumptuous to state that courts do not take into consideration the difference between tort claims and contract claims. That they might not mention it explicitly is another thing. Yet the case law of the several states has stated time and again that the general fairness of the transaction is to be examined when disregarding the corporate entity, and under such circumstances, the court is free to consider and give different weight to either tort or contract claims, as undoubtedly most conciensious judges would do.

VIII. PUBLIC VERSUS CLOSE CORPORATIONS

Certainly, the existence of limited liability in the context of public corporations has been an important element in the creation and developement of the modern securities markets. Some authors even hold, and not without reason, that limited liability is indeed **necesary for the existence of an organized securities market**[58]. Although the existence of limited liability makes sense for either closely held or public corporations, it is even more sustainable in the case of the latter one. Therefore, it seems logical that substantially all cases dealing with the disregard of the corporate structure refer to closely held corporations[59].

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58 See Halpern, Trebilcock & Turnbull. AN ECONOMIC ANALYSIS OF LIMITED LIABILITY IN CORPORATION LAW. 30 U. Toronto L.J. 117 (1980).

59 According to Easterbrook and Fischel, this distinction between close and public corporations is supported by economic logic. They argue that "in close corporations, there is much less separation between management and risk bearing. This has profound implications for the role of limited liability. Because those who supply capital in close corporations typically are also involved in decisionmaking, limited liability does not reduce monitoring costs. Other benefits of limited liability in public corporations -facilitating efficient risk bearing and monitoring by the capital market- are also absent for close corporations. Similarly, close corporations restrict the transfer of their shares to ensure that those who invest will be compatible with existing decisionmakers. Takeover bids are impossible; they are not needed because of the lack of separation of the management and risk-bearing functions. [M]oreover, the incentive created by limited liability for managers to undertake overly risky projects is much more severe in close corporations..." See EASTERBROOK AND

By the same token of the previous analysis, the fact that the particular case regards a close corporation shouldn't be considered as a significant factor favoring disregard of the corporate structure, because it is only in the context of such kinds of corporations that the aforesaid equity remedy should apply.

XIX. SINGLE SHAREHOLDER CORPORATIONS

Many foreign legislations, particularly those of Latin America, prohibit the incorporation of single shareholder corporations. Additionally, the fact of uniting all shares in one person is regarded by some, as an automatic cause for dissolution of the corporation[60].

Nevertheless, it must be pointed out that the realities of the corporate world tend to show that, as a practical matter, one man corporations will always exist, regardless of the fact that there is some reluctance on the part of some foreign legislations to accept it.

FISCHEL, Id. note 49 supra.

60 For example:

(a) Argentina: The incorporation of an S.A. requires a minimum of two shareholders: This is not only obvious from the concept of the S.A. contract, but is also requiered by the relevant statutory provisions. Furthermore, the reunion of all shares in one person is a cause of dissolution. See Halpernin. SOCIEDADES DE RESPONSABILIDAD LIMITADA. Editorial Depalma 8a. Edicion. Buenos Aires (1980) at 38-39.

(b) Chile: An S.A. corporation is dissolved by... 2) the reunion of all shares in the hands of one person. See Executive Decree No. 18.046. LEY SOBRE SOCIEDADES ANONIMAS. Articulo 103 (10/22/1981).

(c) Colombia: The grounds for dissolution of an S.A. corporation are: ...Aquisition of all shares by one person, natural or legal. See Seymor W. Worfel. FOREIGN ENTERPRISE IN COLOMBIA. UNC Press. (1965) at 322.

(d) Guatemala: Corporations are dissolved under each of the following causes: ...5o- By the reunion of all shares or capital contributions of a corporation in a single person. Congressional Decree No. 2-70. CODIGO DE COMERCIO DE GUATEMALA. Articulo 237 (4/9/1970).

(e) Mexico: Corporations are dissolved upon one of the following events: ...By reduction of the amount of shareholders to less than five, or loss of two thirds of the stated capital. See Harry F. Wright. FOREIGN ENTERPRISE IN MEXICO. UNC Press. (1971) at 241.

Focusing the inquiry here in the United States, the fact that a corporation is owned by a single shareholder (be it a person or another corporation -parent-) seems not to be determinant in and of itself[61]. But its presense in factual patterns is usually considered by courts and, sometimes, is given significant weight, especially if combined with other indicia[62]. Hence, it is not uncommon to see cases on which the corporate veil is pierced on single-shareholder corporations. There are many reasonable explanations for this fact: One of them is that the controll factor of the instrumentality or alter ego theory is preponderant in these situations. Another, because it is harder for the shareholder to differentiate between his own business and that of his corporation, thus leading to commingling of funds and refering to the trade and assets of the corporation as his own and vice versa. One last explanation could be because the owner acts on his own and does not have to deal nor explain to other business associates, hence making the weaker and less ethical corporation owner even more suceptible in deciding to use the corporate structure for ilegal, fraudulent or unjust purposes.

Under California law, if a corporation is used by individual or by other corporation to perpetrate fraud, circumvent a statute, or accomplish other wrong or inequitable purpose, a court may disregard the corporate entity and treat its acts as if they were done by

[61] See Bass v. Shutan, 259 F.2d 561 (9th.Cir. 1958) (The fact that a person is the sole stockholder of a corporation does not of itself make him the alter ego of the corporation); Leigh Valley Industries, Inc. v. Birenbaum, 389 F.Supp. 798 (D.C.N.Y 1975) aff'd 527 F.2d. 87 (Under New York Law, there can be no piercing of the corporate veil solely because there is only one shareholder; rather, it is necessary to show that there is fraud, misrepresentation or illegality).

[62] See McMullin v Pelham Bay Riding, Inc, 190 A.D.2d 529,529, 593 N.Y.S.2d 27,28 (N.Y. App.Div. 1st.Dept 1993). In this case, the court held: "While it is true that the corporate veil cannot be pierced solely because of [the shareholder] status as president and sole shareholder of the corporation, the absence of any external indicia of separate corporate identity, such as keeping of corporate records and bank accounts, indicates that [shareholder] may not have respected the corporation as a separate entity."

individuals themselves[63]. Although sole ownership of either individual or corporate parent is not necesary to fall within the meaning of the aforementioned rule, because the person **using** the corporation might only be the dominant party, but not necessarily the only shareholder as explained above, it is nevertheless more common to have such situations in single shareholder corporations.

In cases where there is only one shareholder, it has also been held under California law that the corporate structure can be pierced when the sole owner depletes the corporate assets through loans and uses monies of the corporation for personal expenses[64]. Moreover, It has also been held that the corporation is an "alter ego" of a person who owns all of its stock and uses the corporation as a mere conduit for the transaction of his own business[65].

X. A PRACTICAL APPROACH TO THE PROBLEM

In this confusing area of corporate law, the practitioner need not find a "correct approach" towards the issue of piercing the corporate veil for the purpose of counseling clients. Yet he would be ill advised in not knowing the different theories underlying the problem. On the other hand, certain factual patterns repeatedly weighted by courts as factors that tilt the balancing scale towards piercing the corporate veil can be strongly taken into consideration to achieve maximum protection of his clients.

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[63] In re Marriage of Dick, 18 Cal. Rptr. 2d 743, 15 C.A 4th. 144 (Cal.App. 2 Dist. 1993) (Rev. Den.) See also Design Associates, Inc. v Welch, 36 Cal.Rptr. 341, 224 C.A.2d 165 (Cal.App. 1964)

[64] See NEC Electronics Inc. v. Hurt, 256 Cal.Rptr. 441, 208 C.A.3d. 772 (Cal.App. 6 Dist. 1992) (The appelate court councluded that the sole shareholder was the "alter ego" of the corporation, where evidence indicaded that he depleted assets of the corporation by recieving approximately $ 2.8 Million in loans from the corporation and by using corporate monies to pay for his personal expenses).

[65] Brunzell Construction Co., Inc. v. Harrah's Club, 37 Cal.Rptr. 659, 225 C.A.2d (Cal.App. 1964)

In this order of ideas, Cathy S. Krendl and James R. Krendl have developed a **checklist** for avoiding the risk of having a court pierce the corporate veil:

1.- The shareholder is not a party to the contractual or other obligation of the corporation.
2.- The subsidiary is not undercapitalized.
3.- The subsidiary does not operate at a deficit while the parent is showing profit.
4.- The creditors of the companies are not misled as to which company they are dealing with.
5.- Creditors are not misled as to the financial strength of the subsidiary.
6.- The employees of the parent and subsidiary are separate and the parent does not hire and fire employees of the subsidiary.
7.- The payroll of the subsidiary is paid by the subsidiary and the salary levels are set by the subsidiary.
8.- The labor relations of the two companies are handled separately and independently.
9.- The parent and subsidiary maintain separate offices and telephone numbers.
10.- Separate directors' meetings are conducted.
11.- The subsidiary maintains financial books and records which contain entries related only to its own operations.
12.- The subsidiary has its own bank account.
13.- The earnings of the subsidiary are not reflected on the financial reports of the parent in determining the parent's income.
14.- The companies do not file joint tax returns.
15.- The subsidiary does not borrow money from the parent.
16.- The subsidiary negotiates its own loans and other financings.
17.- Loans and other financial transactions between the parent and subsidiary are properly documented and conducted on an arm's length basis.
18.- The parent does not guarantee the loans of the subsidiary or secure any loan with assets of the parent.
19.- The subsidiary's income represents a small percentage of the total income of the parent.
20.- The insurance of the two companies is maintained separately and each pays its own premiums.
21.- The purchasing activities of the two corporations are handled separately.
22.- The two companies avoid advertising as a joint activity or other public relations which indicate that they are the same organization.
23.- The parent and subsidiary avoid referring to each other as one family, organization, or as divisions of one another.
24.- The equipment and other goods of the parent and subsidiary are separate.
25.- The two companies do not exchange assets or liabilities.

26.- There are no contracts between the parent and subsidiary with respect to purchasing goods and services from each other.
27.- The subsidiary and the parent do not deal exclusively with each other.
28.- The parent does not review the subsidiary's contracts, bids, or other financial activities in greater detail than would be normal for a shareholder who is merely interested in the profitability of the business.
29.- The parent does not supervise the manner in which the subsidiary's jobs are carried out.
30.- The parent does not have a substantial veto power over important business decisions of the subsidiary and does not itself make such crucial decisions.
31.- The parent and subsidiary are engaged in different lines of business.

The aforementioned checklist is usfull though not enough in itself. It is only through a consiensionus study of the case law dealing with the disregard of the corporate structure, and, most important, through an understanding of the doctrines and policies that lay behind the reasoning of cases piercing the corporate veil, that the corporate law practitioner thus can effectively counsel his corporate client so as to reasonably assure the protection of the corporate entity and the corresponding isolation of shareholders from liability.

XI. CONCLUSION

There is no doubt that limited liability has played a significant role in modern corporations, whithout which, in all likelihood the business corporation as we know today would not have subsisted. Nevertheless, its existence, as well as that of the corporate entity, has never been more than a legal fiction, and a very useful one as that. But, as such, it has oftentimes been manipulated to create great unfairness on creditors. Therefore, the legal theories pertaining to the disregard of the corporate entity are not more than attempts to express the policy arguments to balance such abuses.

Furthermore, since the power of courts to disregard the corporate structure is equitable in nature and the decisions are heavily based on the individual facts of each case, it

is almost imposible to predict the outcome of each case by reference only to the case law. It is then of superlative importance to understand the different theories and approaches that support the whole concept of "piercing the corporate veil" and other alternative challenges, and only to the extent that the practitioner fully comprehends such theories, can he addecuately predict, if not prevent, a corporation from having its veil pierced.

Some states, as Delaware, are more likely to respect the corporate structure and its courts less willing to impose direct liability to its shareholders. But this is only a consequene of different balancing of the same policies that are weighted by courts in each and every state when deciding a case on the issue of "piercing the corporate veil".

Finally, no matter how rigid and unwilling the law becomes on the matter (i.e. how a shift in the scale value of the different policy arguments so happens to favor respect of the corporate entity), corporations will allways be suceptible to having courts disregard its corporate entity and imposing liability to its shareholders, as long as the individuals that controll it use it for defrauding or otherwise commiting unjust acts to third parties.