**DISREGARD OF CORPORATE ENTITY**

**1.PIERCING THE CORPORATE VEIL**--(Suits by corporate creditors againstshs)--it’s more common in contract claims than in tort claims. The most important elements considered by the courts:

**a)Commingling of Assets**--commingling of corp assets and personal assets of shs (e.g., paying private debts with corp funds) may lead to piercing of the corporate veil;

**b)Lack of Corporate Formalities**--whether basic corp formalities (e.g., regular meetings, corporate records maintained, issuance of stock) were followed is also relevant. Statutory close corps are permitted more flexibility regarding corp formalities;

**c)Undercapitalization**--if the corp was organized without sufficient capital or liability insurance to meet obligations reasonably expected to arise, the corp veil may be pierced;

**d)Domination and Control By Shareholder**--the corp veil is often pierced when an individual or other corp owns most or all of the stock, so that it completely dominates policy or business decisions.

**e)”Alter Ego,” “Instrumentality,” “Unity of Interest”**--when no separate entity exists and the corp is merely the alter ego or instrumentality of its shs (could be a corporate shareholder), or when there is a unity of interest between the corp and its shs, the corp veil is often pierced. These terms are usually applied only if other grounds are present;

**f)Fraud, Wrong, Dishonesty, or Injustice**--generally, the veil will be pierced only if one of these elements is available, e.g., no piercing of veil if there is a lack of corp formalities without resultant injustice. Piercing the veil usually involves corps with a small number of shs.

**2.PIERCING HAPPENS MOST OFTEN WHEN**:

1)The number of shs is small--the chance of one sh dominating the corp is greater;

2)Deception--There is some kind of deception;

3)Agency--individual is a “principal” and corp is his “agent”

4)Estoppel--outsider was led to believe that he was dealing with an individual, while in fact he was dealing with the corporation.

5)Direct tort--individual and corp acted together and should be jointly/severally liable

6)Instrumentality requirement is satisfied:

I)control of a subsidiary by parent

ii)to commit fraud

iii)to cause loss or injury.

**3.PIERCING THE WALL BETWEEN AFFILIATED CORPORATIONS**--this occurs when a P with a claim against one corp attempts to satisfy the claim against the assets of an affiliated corp under common ownership. This type of aggregation is permitted only when each affiliated corp is NOT a free-standing enterprise but merely a fragment of an entity composed of affiliated corps.

**4.USE OF CORPORATE FORM TO EVADE STATUTORY OR CONTRACT OBLIGATIONS**--the corp form may be ignored when it is used to evade a statutory or contractual obligation. The issue is whether the contract or statute was intended to apply to the shs as well as the corporation. Only **third parties**, not the corp or its shs, are generally allowed to disregard the corp entity.

**5.TWO EXTREMES TO AVOID IN PIERCING THE CORPORATE WALL:**

**a)Old model**--Superman (sh) used corp as his puppet;

**b)New Model**--Superman (sh) and corp are inseparable (alter ego)

**D.SUBORDINATION OF SHAREHOLDER DEBTS--”DEEP ROCK” DOCTRINE**--if a corp goes into bankruptcy, debts to its controlling shs may be subordinated to claims of other creditors. When subordination occurs, shareholder loans are treated as if they were **invested capital** (stock). Major factors in determining whether to subordinate include fraud, mismanagement, undercapitalization, commingling, excessive control, etc.