Piercing the Corporate Veil

2025-2026 Edition

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Introduction to the 2025-2026 Edition

It has now been 35 years since the original publication of this treatise, and there have been just shy of that many annual revisions. It is now possible to make generalizations about the problem treated here with more confidence than it was three and one-half decades ago. Despite the continuing belief of some scholars that the piercing question leads to unpredictable results, there does appear to be an increasing consensus that there is a strong presumption in favor of limited owner liability, and that consequently, it should be difficult to pierce the corporate or the LLC veil. The summary statement made in the "Introduction" to the last revisions still remains valid: It should now be evident to practitioners, judges, and scholars that the shield of owner limited liability should prevail if owners act in good faith and seek to put the entities they form into business with the resources believed necessary to meet the obligations to creditors they reasonably expect to assume. If, however, the owners or other persons in control *act in bad faith either by deliberately setting up an entity without intending that it will meet the obligations to its creditors, or if they abuse the form of the entities they control by draining off funds to their benefit while knowing creditors will be unpaid*, they can expect the veil of separateness of their entities to be pierced, and to have liability for entity debts imposed on themselves.

Putting this into a bit more detailed language, more consistent with that found in the cases treated here, it does appear to be becoming clearer that owners of corporations and LLCs should not be exposed to personal liability *unless there has been an abusive manipulation by those owners with the intention of harming creditors and, indeed, that the manipulation does so harm them*. In other words, it has become clear in most states, and it seems to be becoming clearer in others, that the veil of limited liability should not be removed unless there has been (1) complete *domination* by the shareholder, owner, or other controller to the extent that the dominated entity has no separate mind, will, or existence of its own, (2) an intentional and unjust *abuse* of that control designed to favor the controller and injure creditors, and (3) an actual injury to creditors *caused* by that abusive manipulation. Or, to vary the language slightly, as some courts have, there is a three-part test, each part of which must be satisfied to pierce the veil. There must be (1) a "unity of interest" between the party to be charged and the controlled entity, (2) some

injustice or unfairness present, and (3) a showing that the unjust or unfair behavior was the "proximate cause" of the injury to the plaintiff. This three-part test is generally applied whether the process is called "piercing the veil," or finding one entity or person to be the "alter ego" of another, although in some jurisdictions "alter ego" is shorthand for the first of the tests limned here, often referred to as the "domination" or "control" test. As the reader of this update will discover, some jurisdictions still appear occasionally to regard "alter ego" as a separate and complete ground for corporate disregard, but the better view, as suggested, is to regard "alter ego" as just another way of describing the first of the three required tests for veil piercing.

More cases seem to be arising concerning "piercing" or "alter ego" for jurisdictional purposes, and some jurisdictions have rendered some decisions suggesting it should be easier to pierce the veil for jurisdictional than for liability purposes. Other jurisdictions have either not addressed the issue of easier standards, or have simply, without discussion, applied the same standards. The wiser view, it would seem, is this latter one (applying the same standards), because imposing jurisdiction is itself a form of liability, given the expense of responding to and defending a lawsuit. If we are serious about maintaining limited liability, we should be concerned about any lowering of standards for veil piercing.

It is also becoming clearer that the three-part inquiry (alter ego, injustice, proximate case) should be conducted whether the attempt to pierce the veil involves corporations, LLCs, or other limited liability vehicles, and that essentially the same rules should be applied whether the owners or controllers in question are individuals or other business entities. As indicated in the text, one scholar has recently powerfully argued that it is a "myth" that it is easier to pierce the corporate veil in the parent/subsidiary context than it is in the individual shareholder/corporation or LLC situation. The need for this treatise endures because it does remain true that there is still some uncertainty involved in veil-piercing cases (even though that uncertainty appears to be diminishing), because piercing the corporate or LLC veil remains an essentially *equitable* concept, thus requiring discretion on the part of the court required to do equity.

While, as indicated, there is now increasing understanding among judges that limited liability ought to be the strong presumption, and piercing the "rare exception," because of the *economic* benefits to society of lowering the costs of business investment through limited liability, it remains true that the second major theme of this treatise – that such limited liability

also has *democratic* benefits – has yet to be fully appreciated. Indeed, there are still some jurisdictions that have not grasped that whatever doctrine is employed to withdraw the benefits of limited liability – "agency," "alter ego," "identity," "instrumentality," "single business enterprise," or "piercing the veil" – the issues and concerns are essentially similar, and that *it is inappropriate to deny limited liability unless that legislatively assured privilege has been abused in a manner unjustly to cause harm to a complaining plaintiff*. While this revision includes a few decisions that have erred in this regard, the trend remains in a direction favorable to the friends of limited liability, and developments restricting vicarious or indirect liability to intentional abuses of the corporate and LLC form now do predominate. Nevertheless, as many cases considered in this revision demonstrate, there is a continuing awareness that controlling individuals and entities who *directly participate* in causing harm ought consequently to have liability imposed on them. To further complicate terminology, one federal court in one jurisdiction, Tennessee, for example, has sought to alleviate some misconceptions by seeking to limit "veil piercing" to instances of *vicarious* liability, and to use "alter ego" simply as a term to describe *direct participant* liability. For the time being this is exceptional, because, as already indicated, many jurisdictions use "alter ego" and "veil piercing" interchangeably.

As in the previous few years, this revision includes alterations in most of the sections of Chapter 2 (that dealing with state law regarding piercing the veil; in this revision there are new cases for all of the 50 states) and in several of the sections of Chapter 3 that treat the law, particularly the federal common law, in each of the federal circuits. Of particular significance is one fine United States Supreme Court case, dealing with the Lanham Act, that reaffirms the integrity of the corporate form. Once again, approximately 200 new state and federal cases have been added (with, as usual, a plethora of opinions from the most active jurisdictions such as New York (more than 40 new cases), Texas (25 new cases), California (with one case suggesting that bad faith is not required to find alter ego), Illinois (many cases, including several notable choice of law decisions), Pennsylvania (several decisions upholding the Pennsylvania strong presumption against piercing and several recognizing the continuing validity of the "single business enterprise" theory), and Ohio (eight new court of appeals cases). There is one new Tennessee Supreme Court case that considerably clarifies the piercing jurisprudence of that state and cites this treatise 15 times. One more notable new development in federal piercing law is the application, in an FTC Act context, of the so-called "common enterprise" doctrine. Finally, there are new cases that consider the piercing law of

Bermuda, Canada, Japan, and Taiwan.

As before, as well as reviews of new cases, this revision considers relevant legislation or regulations, scholarship, and consideration of doctrinal changes in the law regarding shareholder or owner liability for the debts of both corporations and LLCs. In particular, this revision reports on new arguments for the requirement of adequate capital in order to avoid owner liability to those damaged by tortious conduct.

Stephen B. Presser

Asheville, NC

August 2025

Dedication

To Susan Graff

About the Author

Stephen B. Presser— is the Raoul Berger Professor of Legal History Emeritus at the Northwestern University Pritzker School of Law and a former Professor of Business Law in the Department of Management and Strategy at the Kellogg School of Management at Northwestern University. He began teaching law in 1974 and assumed emeritus status in 2015. He is the senior author of a leading American legal history casebook, has written extensively on the history of the federal judiciary, and has also published a popularly-oriented book on Constitutional Law, a Constitutional Law casebook, and an introductory casebook on the law of business organizations. He has also written a monograph, *Law Professors: Three Centuries of Shaping American Law (2017)*. He is the co-author of a treatise on corporate takeovers, and taught corporations to law students and to business school students for 35 years. He has twice been a Senior Fulbright Scholar and academic visitor at University College, London, and has also been a Senior Fulbright Scholar and academic visitor at the London School of Economics and an Adams Fellow at the Institute of United States Studies, University of London. He has also taught at the University of Virginia and at Rutgers University. During the 2018-2019 academic year, he taught and served as Visiting Scholar in Conservative Thought and Policy at the University of Colorado, Boulder. He practiced law in Washington, D.C. prior to teaching and also clerked for the Hon. Malcolm Richard Wilkey on the United States Court of Appeals for the District of Columbia Circuit. He is a member of the American Law Institute, was a member of the Advisory Board of Northwestern University School of Law's Corporate Counsel Center and was a frequently invited witness before committees and subcommittees of the United States Senate and House of Representatives. For more than two decades, he has served as a writer and Legal Affairs editor for the journal, *Chronicles: A Magazine of American Culture*.

Preface

This book grew out of the realization, in 1989, that there had not been a single-volume treatise on piercing the veil for more than 50 years, and that cases in which the corporate identity was ignored to fasten liability on officers, shareholders, or others were increasing dramatically. The differences among the piercing doctrines applied in the various state and federal courts appear also to be more sharply drawn than ever. Generally speaking, the law regarding piercing the corporate veil questions is the law of the state or country of incorporation (although there are some recent cases which suggest that the choice of law ought to be dictated by the jurisdiction in which most of the people affected by the corporation live), and because of the fact that corporations functioning in different states might be incorporated in some other state, there was a clear need for a guide for American practitioners who might be faced with piercing problems concerning the law of many jurisdictions.

Within this one volume, then, is a summary treatment of the law of each of the 50 states, the District of Columbia, Puerto Rico, each of the Federal Circuits, the Supreme Court, and selected substantive topics in the federal common law of veil-piercing that seem to occur with more frequency than others. This is the first and still remains the only one-volume work to attempt to treat the law of the states and the federal circuits individually. In the case of each jurisdiction, an attempt has been made to provide in-depth analysis of at least one of the leading cases, with some discussion of the historical evolution of the doctrine, but with greatest emphasis, especially in the footnotes, on the most recent cases, in order to provide practitioners with a basis on which to construct briefs or arguments tailored to the evolving law of the particular forum. There is also a brief look at domestic and German law regarding the limited liability company and the veil-piercing law of England, Germany, France, Argentina, and Japan. While this book is primarily for practitioners, over the years it has proven to be of interest to scholars and students of the law as well.

The presentation is divided into five parts. Chapter One is an analytical overview of the principal veil-piercing doctrines, with special attention to the historical development of limited liability, and the arguments of its critics and defenders. The principal thesis of that Chapter (and of the treatise as a whole) is that limited liability arose in this country *as a means of both promoting economic growth and of promoting democracy*, and that these

initial laudable goals have been frequently lost sight of. Chapter Two contains the summaries of state law, arranged alphabetically, and Chapter Three contains the summaries of federal law, beginning with an overview, and continuing with a treatment of the United States Supreme Court, an examination of the law in each of the federal circuits in numerical order, and, finally, a consideration of selected federal common law topics. Chapter Four is a more focused look at the limited liability company, although piercing of LLC's is treated at some length in Chapter Two as well. Chapter Five addresses the veil-piercing law of several foreign countries. Practitioners with a particular veil-piercing problem of state, federal, or foreign law should be able quickly to turn to the relevant section of the treatise and find the leading caselaw authority on the topic. For those with access to the electronic version of the treatise on Westlaw keyword searches should be even easier.

This book treats primarily the question of when the corporate or LLC entity will be ignored to fasten civil liability on parent entities or individual shareholders, or the members of LLCs; that is, our main focus is on the "piercing the veil," or, as it also frequently called, the "alter ego" issue. No attempt has been made thoroughly to present all related issues, such as criminal liability of individuals for corporate conduct, directors' or officers' liability generally, or the liability of successor corporations for the debts of their predecessors, although these and other related topics are occasionally considered. One related and apparently increasingly important issue that does show up in the cases here treated is that of "reverse piercing," the attempt by the shareholder or LLC Member to get the court to ignore the corporate or LLC form when it is to the shareholder or member's advantage ("inside reverse piercing"), or the attempt by a creditor of the shareholder or member to fasten liability for the shareholder or member's debt on the corporation or the LLC ("outside reverse piercing").

This treatise was originally published as the direct result of the efforts of Clark Boardman's former Director of Publications, Laurence Selby, and the assistance of John R. Duxbury, Senior Legal Editor, who have my undying gratitude. Work on this treatise was originally supported by grants from the Corporate Counsel Center of Northwestern University's Pritzker School of Law, and I am particularly indebted to the Center's founder and President, the late Hon. David S. Ruder, the Center's former executive director, William Elwin, and the law school's Deans, Robert Bennett, David Van Zandt, and Daniel Rodriguez, for their encouragement. I also wish to acknowledge the generous support of the Searle Foundation, and of the assistance of Dan Searle, Gideon Searle, and Northwestern's then President, Henry Bienen, who were instrumental in securing that support.

When I was actively teaching at Northwestern, I had the benefit of an exceptional brigade of student research assistants. Jacquelyne M. Sularz did the original gathering of cases during the summer of 1989, and Leigh Anna Reichenbach, during the summer of 1990, finished work in compiling cases, read and corrected initial drafts of the law of each jurisdiction, and was indispensable in keeping the project current. Tom Gilson continued this work, as my research assistant during the summer of 1991, and was followed by Elizabeth Bergoff in the summer of 1992, Mark Melickian in the summer of 1993, Hadar Danieli and Vicki Shusterman in the summer of 1994, Mark Kirsons, Kathy Kendall, Kirk Kaludis, and Michael Terwilliger in the summer of 1995, Kimberly Baim in the summer of 1996, Kefira Wilderman in the summer of 1997, Zora Shaw in the summer of 1998, and Claudia Launer-Campos in the summer of 1999, aided by Patrick Daly and Matthew Lamkin, in the summer and fall of 2000, and Mario de la Garza, aided by Erin Barry, Samantha Maxfield, and Dan Wolman in the summer of 2001. Erin Barry and Samantha Maxfield worked on the treatise with me again in the summer of 2002, and in the summer and fall of 2003 my law school research assistant was Kara Moskowitz, who was aided by my undergraduate interns Meagan Kudchadkar and Katie Resor. In the summer of 2004, my two law student research assistants were Amy Boyd and Paul Conrad, and they supervised a veritable mini-law firm of undergraduate interns, Kevin Anderson, Kathryn Deangelo, Sara Feinstein, John Piersall, Kim Richardson and Ben Snyder. Similarly, in the summer of 2005, my two law student research assistants, Leila Farrahi and Peter Pattakos supervised a new group of student interns, Daniel Bronson, Rebecca Fitzpatrick, Roger Hsieh, Brandon Kreines, Robert Morrow, Elizabeth Moum, Rich Nassif, Tricia Putzy, Christina Rizk, Whitney Roland, Shannon Sole, Jennifer Wasson, and Lacey Withington. In the summer of 2006, my law student research assistants were Nury Agudo, Thomas Kelly, and, in a return engagement, Kim Richardson. Nury, Tom, and Kim all drafted parts of the 2007 supplement, and supervised a group of undergraduate interns, including Garret Fleming, Alina Garcia, Lily Granville, Christina Goduco, Kate Kountzman, Alli Lehr, Jennifer Madden, Jennifer Sommer, and Abby Tillman. In the summer of 2007, my research assistants were Cathy Fagg and Kris Swigart, aided by our undergraduate intern, Melissa Solomon. Melissa returned to help in the summer of 2008, and worked with my law school research assistants, Eric Reece and Heather Scheiwe. In the summer of 2009, I was fortunate to have four law school research assistants, Kirt Gallatin, Andrew Neustein, Corey Walker, and Andrew Zunes, who were aided by my undergraduate intern, Daniel Innamorati. In the summer of 2010, I was aided by law students Ted Wells and

Jihyun Amy Chung, and in the fall of 2010 by LLM student Flora Pitte-Ferrandi. In the summer of 2011, my three law school research assistants were Ashley Becker, Jaya Gupta, and Mark Hockley. In the summer of 2012 my three law school research assistants were Cheryl Friedman, Kelly Hamren-Anderson, and Andrew Hess. After 2012, following my retirement from full-time teaching, and with the regularization of my updating procedures, I was able to continue without student research assistance. I am also grateful to my son, David C. Presser, now a lawyer in private practice in Chicago, who called to my attention a recent statutory wrinkle in Illinois law, resulting in a change to the part of the treatise dealing with Limited Liability Companies. My former secretary, Suzanne Williams, produced the original manuscript, and was aided occasionally by Patricia Franklin. The production of subsequent revisions for many years was supervised by my indefatigable faculty assistant, the late Tim Jacobs. The work also benefited from the discussions I had with Jokin Azurza, a graduate student from Spain, who did a thesis with me on veil-piercing law in America. I am indebted to eight superb editors at Thomson Reuters, Clay Mattson, Charles Keating, Leah Ogonek, Khara Singer-Mack, Vicki Beighley, Alia Fasold, the late Claire Hallinan, and, most recently, the splendid Mary Ellen Fox.

Finally, for constant inspiration and encouragement, I owe an incalculable debt to my wife, Susan Graff, to whom this year's edition is once again dedicated.

Because of the rapid nature of the changes taking place in most of these jurisdictions, and because of the fact that annual revisions can only selectively treat parts of state, federal, and international law, practitioners should not rely exclusively on what is here given but should check, in particular, for recent cases that have appeared since the publication of the last update to the treatise. Careful attention should be accorded to the footnotes, where most recent cases are noted, particularly in the early and last notes in each section of Chapter 2. In an undertaking of the scope attempted here, there are bound to be errors of judgment, commission, and omission, and comments for improvements and corrections have been and will be gratefully received.