

#### EXAMINERS' ANALYSIS OF QUESTION NO. 4

##### 1. Legal standards regarding piercing the corporate veil.

A corporation and its shareholders are distinct legal entities, *Kern v Kern-Koskela*, 320 Mich App 212, 227 (2017), and, as such, stockholders are generally not liable for corporate obligations. *Klager v Robert Meyer Co*, 415 Mich 402, 411 (1982); *Flickema v Henry Kraker Co*, 252 Mich 406, 409 (1930).

Despite this general rule, under some circumstances the courts will hold the shareholders individually liable for corporate obligations. This is known as "piercing the corporate veil." As an equitable remedy, "there is no single rule delineating when the corporate entity may be disregarded. . . ." *Florence Cement Co v Vettraino*, 292 Mich App 461, 469 (2011). Rather, the entire spectrum of relevant facts is considered to determine whether the corporate form has been abused. *Id.* In order for "a corporate veil to be pierced, the corporate entity (1) must be a mere instrumentality" or alter ego of the shareholders, "(2) must have been used to commit a wrong or fraud, and (3) there must have been an unjust injury or loss to the plaintiff." *Id.*

##### 2. Whether, based on the facts of this case, Ron's Roofing is likely to prevail in its effort to hold Larry, Moe and Curly liable.

###### a. Corporation used as a mere instrumentality.

The facts show that defendants used PPI as a mere instrumentality and did not treat PPI as a separate legal entity. Moe acquired parcels of property, which he turned over to PPI without a formal deed transfer. Moe incurred expenses, and then simply had PPI reimburse him directly. Larry and Moe borrowed an additional \$500,000 to "loan" to PPI without the benefit of a promissory note. Moreover, distribution checks were issued to Moe and Curly, however, whenever PPI needed capital, the money was borrowed from the bank. Money was borrowed either in defendants' own names or as guarantors for PPI. Thus, defendants treated their personal liabilities to the bank as PPI's liabilities. Lastly, while PPI had no duty to make Larry and Moe's loan payments, PPI made payments directly to the bank on Larry and Moe's behalf.

Because defendants made no distinction between their own debts and PPI's debts, defendants did not treat PPI as a separate entity. Therefore, PPI was the mere instrumentality or alter ego of Larry, Moe and Curly, which is a hallmark of a claim for piercing the corporate veil.

**b. Whether the corporate entity was used to commit a wrong or fraud.**

The facts also show that defendants used PPI to commit a wrong or fraud. Larry falsified the sworn statement that he submitted to Alpha Bank for the remaining loan proceeds. Larry's sworn statement indicated that of the total amount PPI owed Ron's was \$50,000. However, the actual amount owed was \$150,000.00, which Larry well knew because he had signed the contract with Ron's on behalf of PPI. Thus, Larry knowingly falsified the sworn statement, which amounted to fraud. Therefore, PPI was used to commit a wrong or fraud. Additionally, PPI was severely undercapitalized. It had roughly two million dollars in debt and capital contributions of only \$2,400. As a result of the \$100,000 in distributions to Moe and Curly, PPI was unable to pay its debt to Ron's Roofing when the debt became due; this points to fraudulent intent.

**c. Unjust injury or loss to Ron's Roofing.**

Finally, Ron's Roofing suffered a significant loss as a result of Larry, Moe and Curly treating PPI as a mere alter ego of themselves and deliberately undercapitalizing PPI. Ron's Roofing lost \$100,000 for roofing work that was undisputedly performed.

Applying the above factors, Ron's Roofing is likely to prevail in its effort to pierce the corporate veil of PPI, meaning that Larry, Moe and Curly would be held liable for the \$100,000 shortfall.