**4.27 Miscellaneous Issues – Alter Ego – Subsidiary as**

**Alter Ego of Parent Corporation**

In this case, [name of plaintiff] claims that [name of subsidiary] was the mere instrument or tool of its parent corporation, [name of parent corporation] – what the law calls an alter ego. Should you find that [name of plaintiff] has proved this claim by a preponderance of the evidence, the law requires you to disregard the separate status of [name of subsidiary] and hold [name of corporation] legally responsible for the subsidiary’s acts.

Under our free-enterprise economic system, the law permits – even encourages – people, and even other corporations, to form corporations as a way to attract stockholder investments. Parent corporations can invest their money in subsidiary enterprises without risking liability for the subsidiary’s acts and transactions. In return, society gets the benefit of jobs and other commercial activity that the subsidiary’s business creates. So, in most cases, the status of a subsidiary corporation as a separate legal entity apart from its parent corporation must be respected and preserved.

But this rule is not absolute, and you can disregard the separate status of a subsidiary corporation when the parent corporation uses the subsidiary as a mere tool for the purpose of evading or violating a statutory or other legal duty, or for accomplishing some fraud or other illegal purpose.

To decide whether to treat [name of subsidiary] as the alter ego of [name of corporation], you should consider:

 whether the parent caused the subsidiary’s incorporation;

 whether the parent and subsidiary have common stock ownership, or directors or officers in common;

 whether the business purpose or function of the subsidiary is separate and distinct from the parent;

 whether the two entities kept separate corporate books and records (even though they may have filed joint tax returns as required by law);

 whether the parent finances the subsidiary or pays the subsidiary’s salaries and other expenses;

 whether the subsidiary’s funds were comingled – or not mingled – with the parent’s funds; and

 any other factor the evidence disclosed tending to show that the subsidiary was or was not operated as an entity separate from its parent.

You should consider all these factors. No single factor is determinative.