Lifting the Veil on Iowa Piercing Jurisprudence and Suggestions for Reform

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LIFTING THE VEIL ON IOWA PIERCING JURISPRUDENCE AND SUGGESTIONS FOR REFORM

Matthew G. Doré*

ABSTRACT

Like courts in other states, Iowa courts employ a multifactor test for veil piercing that evaluates business owners and their entities based on undercapitalization, commingling of finances, failure to observe formalities, and the like. Yet Iowa precedent assigns no weight to any of these factors, offers few insights concerning their meaning, and gives even less guidance on the factors’ relationship to the justifications for piercing.

This Article outlines a path for bringing greater order and predictability to Iowa’s piercing jurisprudence, starting with a taxonomy based on legal scholars’ consensus that courts are justified in piercing when those controlling the entity do one or more of the following: (1) use the corporate privilege to evade obligations imposed by other legal schemes; (2) engage in fraud, misrepresentation, or similar deceptive behavior to obtain corporate credit; or (3) engage in abusive self-dealing that improperly subordinates creditor claims to corporate assets. If one first identifies the asserted policy justification for piercing in a particular case, this Article explains, it becomes easier to assess whether traditional piercing “factors” such as undercapitalization, commingling of finances, or failure to follow formalities warrant application of the remedy and why. Accordingly, this Article recommends Iowa courts require piercing plaintiffs to identify one or more of the foregoing policy justifications for the piercing remedy before determining whether any traditional piercing factors support granting that relief.

This Article also challenges Iowa’s tradition of leaving piercing decisions to juries. Piercing is an equitable remedy that judges should administer without juries, this Article argues, but even if piercing is a legal claim, a decision to grant or withhold the piercing remedy is a lawmaking and policymaking exercise and thus a legal question for the court. Accordingly, this Article recommends that regardless of whether judge or jury makes the underlying factual findings in piercing cases, Iowa judges, rather than juries, should decide whether to grant and how to shape the piercing remedy.

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I. INTRODUCTION

Iowa courts occasionally pierce the veil of a validly formed business organization based on findings that its owners or managers have abused the corporate privilege. As used here, “abuse of the corporate privilege” means abuse of the legal “personhood” or “corporate” status that now extends to a wide variety of business entities, including nonprofit corporations and limited liability companies. Piercing negates consequences that normally flow from the corporate privilege, including limited liability for owners and managers. Creditors of insolvent corporations, who typically invoke the remedy as a means to recover payment of noncollectible debts, are the most common piercing plaintiffs.

But piercing is not so limited. A court might disregard a corporation’s legal existence to assert personal jurisdiction over corporate officers or


2. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935–36 (8th Cir. 2007) (affirming a jury verdict that pierced the corporate veil of an Iowa nonprofit corporation and imposed liability on its organizers); Cemen Tech, Inc. v. Three D Indus., L.L.C., 753 N.W.2d 1, 6 (Iowa 2008) (quoting Iowa’s six-factor corporate piercing test as the appropriate piercing standard for Iowa limited liability companies). Looking across the U.S. legal landscape more generally, it is clear courts extend traditional piercing remedies to limited liability partnerships, as well as limited liability companies. See Matthew G. Doré, What, Me Worry? Tort Liability Risks for Participants in LLCs, 11 U.C. DAVIS BUS. L.J. 268, 271 n.10 (2011) (collecting authorities).

3. Legal personhood status provides the primary theoretical support for shielding an entity’s owners and managers from liability for its debts, but statutory provisions buttress that principle by expressly conferring limited liability protection on certain parties. See, e.g., MODEL BUS. CORP. ACT § 6.22(b) (AM. BAR ASS’N 2016) (“A shareholder of a corporation is not personally liable for any liabilities of the corporation . . . .”); see also Doré, supra note 2, at 284–87 (discussing the role of supplemental statutory provisions that expressly confer limited liability on company members and managers).

4. ROBERT C. CLARK, CORPORATE LAW § 2.4, at 73 (1986) (“[A] lawyer surveying a broad range of cases involving attempts to pierce the corporate veil might easily conclude that they are unified . . . by the remedy sought—subjecting to corporate liabilities the personal assets directly held by shareholders . . . .”).
shareholders, for example, or to allow creditors of individual shareholders to “reverse pierce” the veil to reach corporate assets. In some jurisdictions, courts have permitted shareholders themselves to reverse pierce the entity veil to allow corporations to assert shareholders’ personal rights or shareholders to assert corporate rights. Thus, one could plausibly view recent U.S. Supreme Court decisions that enable corporations to assert their owners’ legal and constitutional rights as piercing examples.

Although there is little commentary on Iowa piercing jurisprudence, there is ample legal scholarship on piercing as a general concern of corporate and business law. Over the past two decades, empirical studies have begun to shed light on how U.S. courts decide piercing cases. The advent of limited liability companies and limited liability partnerships has triggered

5. See, e.g., Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634, 638 (8th Cir. 1975) (applying piercing factors to establish personal jurisdiction over the chief executive officer and sole shareholder of a nonresident corporation that conducted corporate activities in Iowa).

6. See, e.g., Benson v. Richardson, 537 N.W.2d 748, 761–62 (Iowa 1995) (allowing physician’s personal creditors to pierce the veil of a professional corporation established by the physician and his wife). This use of the piercing remedy is not unique to Iowa courts. See, e.g., United States v. Badger, 818 F.3d 563, 565–66 (10th Cir. 2016) (seeking declaration that various entities were alter egos of target individuals, so entity assets could be used to satisfy securities fraud claims against the individuals).

7. See, e.g., Cargill, Inc. v. Hedge, 375 N.W.2d 477, 479–80 (Minn. 1985) (allowing a family to claim a homestead exemption on property owned by the family farm corporation); Roepke v. W. Nat’l Mut. Ins. Co., 302 N.W.2d 350, 353 (Minn. 1981) (allowing corporation’s sole shareholder to qualify as an insured under a policy covering corporation’s automobiles).


10. The pioneering work is Robert B. Thompson, Piercing the Corporate Veil: An Empirical Study, 76 CORNELL L. REV. 1036 (1991), but there have been many empirical studies since. See Rolf Garcia-Gallont & Andrew J. Kilpinen, If the Veil Doesn’t Fit . . . An Empirical Study of 30 Years of Piercing the Corporate Veil in the Age of the LLC, 50 WAKE FOREST L. REV. 1229, 1230–31 (2015) (describing the authors’ empirical study and previous empirical studies).
debates about whether and how the piercing doctrine should apply to new entities. Discussions continue about the policy justifications for piercing, the optimal tests for evaluating piercing claims, and the procedures for litigating piercing cases, including the proper function of judge and jury. Drawing from this and other commentary, this Article reexamines Iowa’s veil piercing case law and offers a few suggestions for reform.

As Part II explains, the leading Iowa piercing tests are part metaphor, asking whether the entity was a “mere shell” or “sham,” was an “intermediary,” “instrumentality,” or “alter ego” of its shareholders, or whether shareholders abused the corporate privilege. The Iowa cases also support a multifactor test for piercing that evaluates business owners and their entities based on undercapitalization, commingling of finances, failure to observe formalities, and the like. Unlike metaphors, these criteria offer facially useful checklists for deciding piercing cases. Yet Iowa precedent assigns no weight to any of these factors, offers few insights concerning their meaning, and provides even less guidance on the factors’ relationship to the


12. See, e.g., Gevurtz, supra note 9, at 858–61 (identifying policies that justify piercing); Jonathan Macey & Joshua Mitts, Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil, 100 CORNELL L. REV. 99, 109 (2014) (positing that veil piercing is done to achieve three discrete public policy goals, each of which is consistent with economic efficiency).


15. See infra Part II.A.

16. See infra Part II.B.

17. See infra Part II.B.
justifications for piercing.\textsuperscript{18} Compounding this problem, the six factors repeated in the leading cases are not the only potential piercing considerations.\textsuperscript{19}

Part III outlines a path for bringing greater order and predictability to Iowa piercing decisions, starting with a taxonomy for organizing piercing precedents.\textsuperscript{20} This metric, drawn from the work of other scholars, is premised on the theory that piercing is not a unified, coherent doctrine but rather a remedy courts use to accomplish discrete policy goals.\textsuperscript{21} As Part III explains, there is considerable scholarly consensus that courts are justified in piercing when those controlling the entity do one or more of the following: (1) use the corporate privilege to evade obligations imposed by other legal schemes; (2) engage in fraud, misrepresentation, or similar deceptive behavior to obtain corporate credit; or (3) engage in abusive self-dealing that improperly subordinates creditor claims to corporate assets.\textsuperscript{22}

As Part III also shows, if one first identifies the asserted policy justification for piercing in a particular case, it becomes easier to assess whether factors such as undercapitalization, commingling of finances, or failure to follow formalities warrant application of the remedy and why.\textsuperscript{23} In fact, depending on the policy objective of the piercing remedy, one or more of Iowa’s traditional piercing “factors” may be irrelevant.\textsuperscript{24} Accordingly, Part III recommends Iowa courts require piercing plaintiffs to identify a more specific policy justification for the remedy than abuse of the corporate privilege or that the corporation is a mere shell.\textsuperscript{25} In most cases, that justification should be one of the three policy objectives mentioned above.\textsuperscript{26} Only then should the court determine whether any traditional factors support granting piercing relief.\textsuperscript{27}

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Part IV evaluates a procedural issue—Iowa’s tradition, sometimes honored in the breach, of leaving piercing decisions to juries.28 While this practice respects civil litigants’ constitutional right to a jury, treating piercing as a fact question means that determinations to grant or withhold the remedy are reviewable only on a substantial evidence standard, constraining Iowa appellate judges’ ability to shape and refine the piercing doctrine.29 As Part IV explains, there is disagreement about whether piercing is an equitable or legal remedy and, if the latter, about whether piercing is a legal question, a fact question, or a mixed question of law and fact.30 The better view, Part IV concludes, is that piercing is an equitable remedy that judges should administer without juries.31 But even if piercing is a legal claim, a decision to grant or withhold the remedy is a lawmaking and policymaking exercise and thus a legal question that does not implicate constitutional rights to juries.32 Accordingly, Part IV recommends that regardless of whether judge or jury makes the underlying factual findings in piercing cases, Iowa judges, rather than juries, should decide whether to grant and how to shape the piercing remedy.33 Part V offers a conclusion to this Article.

The Author was prompted to reevaluate Iowa piercing jurisprudence after one jurist, Judge (now Iowa Supreme Court Justice) Christopher McDonald, authored several recent opinions questioning Iowa’s piercing case law on both substantive and procedural grounds.34 It is hoped, then, that this Article is timely. The piercing topic is also undeniably important for litigants, as it is simultaneously the least understood and most frequently litigated issue in corporate law.35 Finally, Iowa’s transactional attorneys will

28. See infra Part IV.
29. See infra Part IV.A.
30. See infra Part IV.B.
31. See infra Part IV.C.
32. See infra Part IV.C.
33. See infra Part IV.C.
34. See Minger Constr., Inc. v. Clark Farms, Ltd., No. 14-1404, 2015 WL 7019046, at *5–6 (Iowa Ct. App. Nov. 12, 2015) (McDonald, J., concurring in part and dissenting in part) (questioning both Iowa’s substantive standards for piercing and the practice of allowing juries to decide piercing cases); see also Keith Smith Co. v. Bushman, No.15-0347, 2015 WL 8364910, at *13 (Iowa Ct. App. Dec. 9, 2015) (McDonald, J., concurring in part and dissenting in part) (arguing that when a voluntary creditor, such as a contract claimant, seeks to pierce the entity veil on the basis of inadequate capitalization, the court should examine whether the creditor assumed that risk).
35. See Thompson, supra note 10, at 1036 (“Piercing the corporate veil is the most litigated issue in corporate law and yet it remains among the least understood.”).
benefit from clarity in the state’s piercing case law, since they must advise business clients about how to avoid piercing claims.

II. THE VEIL PIERCING REMEDY IN IOWA

A. Iowa Piercing Standards: The Metaphors

Like courts in other jurisdictions, Iowa courts often use the phrase piercing the corporate veil when courts disregard the corporation’s existence as a separate legal person from its shareholders,36 a metaphor that is said to have originated with Professor Maurice Wormser, the first legal scholar to write about piercing cases.37 Iowa courts have used many other metaphors for the piercing exercise, labeling a corporation whose separate existence is disregarded as a “mere shell,” “intermediary,” “instrumentality,” “alter ego” of the shareholders,38 or “sham.”39 Iowa civil jury instructions employ yet another pejorative, asking juries in veil piercing cases to determine whether defendant shareholders “abused the corporate privilege.”40

Some cases purport to distinguish among piercing theories by using metaphors as labels for distinct piercing tests.42 For example, in HOK Sport, Inc. v. FC Des Moines, L.C., the Eighth Circuit identified alter ego or instrumentality theory as a distinct strain of Iowa veil piercing pursuant to which a court can disregard an entity that is “merely an instrumentality or device set up to ensure the avoidance of . . . legal obligations.”43

36. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935–36 (8th Cir. 2007) (applying Iowa law and affirming the jury verdict for “piercing the corporate veil”).
38. See, e.g., Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 809–10 (Iowa 1978) (calling the corporation a “mere shell” or “intermediary”).
39. Benson v. Richardson, 537 N.W.2d 748, 761 (Iowa 1995) (using “instrumentality” or “alter ego”); see also HOK Sport, Inc., 495 F.3d at 935 (applying Iowa’s “alter ego” theory).
42. See HOK Sport, Inc., 496 F.3d at 935.
43. See, e.g., id.
The courts’ extensive use of these and other veil piercing metaphors has been roundly criticized as unhelpful and confusing, a criticism Justice McDonald echoed in a recent Iowa piercing decision. Yet, as in other areas of law—think “eggshell plaintiff” or “fruit of the poisonous tree”—the colorful terms might shed light on the logic behind piercing analysis. The term piercing itself, for example, indicates that substance is more critical than form. Terms like alter ego or instrumentality echo agency law’s vicarious liability theories, which are predicated on the principal’s control of the agent and its benefit from the agent’s activities. Sham and fraud suggest the piercing remedy targets conduct that unfairly misleads. And whether there is meaningful logic behind any or all of the various piercing metaphors, it is probably foolish to expect that legal writers, including courts, will ever fully relinquish them when they draft piercing decisions.

The good news for Iowa jurisprudence is that the state’s courts do not actually use these metaphors as tests for piercing. In Iowa’s leading modern piercing decision, Briggs Transportation Co. v. Starr Sales Co., the Iowa Supreme Court stated piercing is appropriate for a corporation that is “a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice.”

44. See, e.g., Minger Constr. Inc. v. Clark Farms, Ltd., No. 14-1404, 2015 WL 7019046, at *5 (Iowa Ct. App. Nov. 12, 2015) (McDonald, J., concurring in part and dissenting in part) (“The metaphor of piercing the corporate veil has incorrectly framed the relevant question.”); Gevurtz, supra note 9, at 855 (“At best, such terms are unhelpful. All too often, they confuse the issue.”); Peter B. Oh, Veil-Piercing, 89 TEX. L. REV. 81, 83–84 n.7 (2010) [hereinafter Oh, Veil-Piercing] (listing 41 different metaphors that courts have used when deciding piercing cases) (“The inherent imprecision in metaphors has resulted in a doctrinal mess.”).


46. See WILLIAM A. GREGORY, THE LAW OF AGENCY AND PARTNERSHIP § 52, at 118 (3d ed. 2001) (“[Vicarious liability] has been explained as a price to be paid in return for benefits received by the master by virtue of the exercise of the privilege of control over others in his house or business enterprise.”).

47. See Oh, Unbound, supra note 13, at 91 (“The imagery of a corporate ‘alter ego’ or ‘instrumentality’ has proven too seductive for courts to resist engaging in ‘jurisprudence by metaphor or epithet,’ liberally conjuring up a mish-mash of gilded allusions.”). A classic joke also illustrates the point well: A colorful writer who was enamored with metaphors was warned against mixing them. “Don’t worry,” she responded, “I’ll burn that bridge when I come to it!”


49. Id.
this colorful phrase as a test, however, the court stated that these terms were “examples” of the “exceptional circumstances” in which Iowa courts will disregard a corporate entity.\textsuperscript{50} To reach its conclusion that piercing was the appropriate remedy, the \textit{Briggs} court actually applied a six-factor analysis\textsuperscript{51} that is now a fixture in Iowa’s pattern instructions for civil juries.\textsuperscript{52} A proper evaluation of Iowa piercing case law, then, must look beyond the metaphors.

B. Iowa Piercing Standards: Briggs’ “Factor” Analysis and the Iowa Pattern Jury Instructions

1. The Briggs Facts

A recital of the \textit{Briggs} facts provides useful context for the six-factor analysis the court employed to resolve the piercing claim.\textsuperscript{53} Northern State Sales (Northern) sold goods on credit to Starr Sales Company (Starr), a closely held corporation that Scott Voeltz and his parents, Robert and Martha, had recently organized.\textsuperscript{54} Starr had few, if any, assets, so Scott and Robert supplied a related company’s information as Starr’s asset information when Northern investigated Starr’s credit.\textsuperscript{55} Scott and Robert then personally sold the goods Starr purchased from Northern and failed to account for the proceeds, with the result that Starr never paid Northern for the goods.\textsuperscript{56} Briggs Transportation Company (Briggs), the shipper that delivered Northern’s goods to Starr, succeeded to Northern’s payment rights and pursued recovery from Starr for breach of contract and from the Voeltzes on theories of fraud, conspiracy, and piercing.\textsuperscript{57}

2. A Six-Factor Piercing Analysis

The Iowa Supreme Court affirmed the trial court’s finding that piercing was an appropriate remedy under the following six-factor test: (1) Was the

\textsuperscript{50} \textit{Id.} at 809–10.
\textsuperscript{51} See \textit{infra} note 58 and accompanying text.
\textsuperscript{52} Iowa Civil Jury Instructions, \textit{supra} note 41, at ch. 3300. For the full text of the instructions covering piercing claims, see \textit{infra} note 67.
\textsuperscript{53} Briggs, 262 N.W.2d at 807–08.
\textsuperscript{54} See \textit{id.} at 807.
\textsuperscript{55} See \textit{id.}
\textsuperscript{56} \textit{Id.} at 808.
\textsuperscript{57} \textit{Id.} Briggs had delivered the goods to Starr without proper collection of a sight draft, as the seller, Northern, had intended. \textit{Id.} Briggs reimbursed Northern for the sold goods and was then subrogated to Northern’s rights against Starr and its owners. \textit{Id.}
corporation undercapitalized? (2) Did the corporation keep separate books? (3) Were corporate finances kept separate from individual shareholder finances, or did the corporation pay individual obligations? (4) Was the corporation used to promote fraud or illegality? (5) Did the corporate participants follow corporate formalities? (6) Was the corporation a mere sham?58

The Briggs court had little trouble concluding that piercing was justified under these criteria.59 With respect to the first factor, capitalization, the court noted testimony that Starr had little or no capital—that “(t)here wasn’t any money paid in.”60 Perhaps more relevant, but not noted by the court in its capitalization discussion, was evidence that Starr’s principals, Scott and Robert, misrepresented the corporation’s assets and credit history when Northern inquired about that issue before selling goods to Starr.61

The second and third factors, separate books and finances, were also problematic for the defendants, as there were no corporate financial records and there was considerable evidence that Scott and Robert sold the goods Briggs had delivered to Starr and then misappropriated the proceeds.62 The fifth factor, observance of corporate formalities, also supported piercing as there was no evidence that Scott, Robert, or Martha had taken any steps beyond filing Starr’s incorporation papers with the state of Iowa, publishing a notice of incorporation, and opening a bank account.63

For the fourth and sixth factors, promoting fraud or illegality and the corporation is a mere sham, the court offered only this conclusory statement: “There was little evidence Starr Sales was ever intended to be or operated as a valid corporation. It was a sham, and under the above criteria cannot shield the officers and directors from liability arising out of their conduct.”64

58. Id. at 810–11.
59. Id. at 812.
60. Id. at 810.
61. The corporation’s principals substituted the credit history of an affiliated company, which had substantial assets, for that of the newly formed Starr Sales. Id. at 807.
62. Id. at 810 (“Corporate funds were not segregated. Merchandise sale proceeds were not deposited in the corporate bank account. Scott claimed the protection of the [F]ifth [A]mendment rather than testify what he did with these proceeds.”).
63. Id. at 809–10 (“[T]he only evidence Starr Sales had any corporate books was Scott’s testimony these records had been destroyed in a November truck accident. The district court disbelieved this evidence.”).
64. Id. at 811.
While one can find evidence of other factor-based piercing analyses that purport to represent Iowa law on the subject, over the past four decades, Iowa courts have consistently repeated the six Briggs factors in piercing decisions. Equally important, these same factors are now enshrined as the test for veil piercing in the state’s pattern instructions for civil juries.

65. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935 (8th Cir. 2007) (“A corporate entity is the alter ego of a person [under Iowa law] if (1) the person influences and governs the entity; (2) a unity of interest and ownership exists such that the corporate entity and the person cannot be separated; and (3) giving legal effect to the fictional separation between the corporate entity and the person would ‘sanction a fraud or promote injustice.’”).


67. Iowa Civil Jury Instructions 3300.01 and 3300.02 provide:

Piercing the Corporate Veil - Essentials For Recovery. The plaintiff must prove all of the following propositions: 1. The defendant is a shareholder of (name of corporation). 2. (Name of corporation) is indebted to the plaintiff. 3. The defendant has abused the corporate privilege. 4. The amount owed by the corporation to the plaintiff.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

... Piercing the Corporate Veil - Definition. Corporate privilege is the right of a shareholder of a corporation to avoid personal liability for the debts of the corporation. A shareholder may be held personally liable for corporate debts only in exceptional circumstances in which the shareholder abuses the privilege. An abuse may be found when the corporation is a mere shell, or serves no legitimate business purpose, or is used by the shareholder primarily as a means to commit fraud or promote injustice. Factors that tend to establish abuse of the corporate privilege include the following: 1. The corporation is undercapitalized. 2. The corporation lacks separate books. 3. The corporation’s finances are not kept separate from individual finances or individual obligations are paid by the corporation. 4. The corporation is used primarily to promote fraud or illegality. 5. The corporate formalities are not followed. 6. The corporation is a mere sham.

IOWA CIVIL JURY INSTRUCTIONS, supra note 41, at ch. 3300.
C. Potential Problems with the Briggs Factors

Courts apply multifactor tests to resolve many legal problems.\textsuperscript{68} Determination of proximate cause in a negligence case is an example familiar to all lawyers; flexible standards identify factual considerations, such as causal sequence and foreseeability, that are relevant to application of the broader legal principle.\textsuperscript{69}

When Iowa courts assess piercing claims using the multifactor analysis, they are following prevailing U.S. practice.\textsuperscript{70} The Briggs court, for example, derived its six-factor piercing test from the Eighth Circuit’s use of those same factors in \textit{Lakota Girl Scout Council, Inc. v. H Avey Fund-Raising Management, Inc.},\textsuperscript{71} a case that, in turn, adopted the factors from \textit{Fletcher’s Cyclopedia of the Law of Private Corporations}.\textsuperscript{72} In fact, the proposition that courts must be flexible when resolving piercing cases goes all the way back to Professor Wormser’s early scholarship on the subject.\textsuperscript{73}


\textsuperscript{69}. See \textit{Palsgraf v. Long Island R.R. Co.}, 162 N.E. 99, 104 (N.Y. 1928) (Andrews, J., dissenting) (“There are some hints that may help us. The proximate cause, involved as it may be with many other causes, must be, at the least, something without which the event would not happen. The court must ask itself whether there was a natural and continuous sequence between cause and effect. Was the one a substantial factor in producing the other? Was there a direct connection between them, without too many intervening causes? Is the effect of cause on result too attenuated? Is the cause likely, in the usual judgment of mankind, to produce the result? Or, by the exercise of prudent foresight, could the result be foreseen? Is the result too remote from the cause, and here we consider remoteness in time and space.”).


\textsuperscript{71}. \textit{Lakota Girl Scout Council, Inc.}, 519 F.2d at 638.

\textsuperscript{72}. \textit{Id.} (citing Fletcher, supra note 70, § 41.30).

\textsuperscript{73}. See Flora, supra note 37, at 15 (“The difficulties in codifying a fundamentally equitable doctrine long ago led Prof. Wormser to proclaim codification ‘not only impossible but preposterous. Human life and relations in regard to corporate development[,]’ he insisted, ‘are far too complex to permit of any such formulation. . . . Those who would codify it fail to understand the spirit and genius which underlie it.’”).
But using multifactor analysis to decide whether to respect a business entity’s separate legal existence from its owners is not without its problems. A leading corporate scholar, Professor Franklin Gevurtz, labels factor analysis of piercing as “the template approach” and observes:

The template approach is a godsend to students, litigants, and courts who recognize the weakness of reasoning by pejorative, but still wish to remain aloof from analysis based on policy. Unfortunately, it leads to difficulties. To begin with, listing facts from prior opinions without an evaluation of why these facts should or should not lead to piercing inevitably introduces facts into these sort of lists, which, upon reflection, seem of questionable significance. . . .

A second difficulty with the template approach is that the relevance of some facts in the list, even when present in a given case, may depend upon the circumstances. . . .

Finally, this sort of multi-factor approach carries tremendous indeterminacy. Must all factors on the list be present? Is the presence of any one factor enough? If the answer to these two questions is, as seems to be the rule from the opinions, no, then how many factors does one need and which factors are more important than the others? The opinions provide little guidance.74

The six-factor Briggs test, evaluated in more detail below, does not fare well against Professor Gevurtz’s critique of the template approach.75 For example, the Briggs criteria are inherently indeterminate because Iowa precedent offers no suggested weighing of the various factors. And, apparently, plaintiffs do not need to establish all of the factors because Iowa’s civil jury instructions counsel the trial court to instruct the jury on only those piercing criteria listed in Briggs that are supported by evidence.76 On the other hand, these same jury instructions suggest,77 and at least one

74. Gevurtz, supra note 9, at 857–58.
75. See id.
76. See IOWA CIVIL JURY INSTRUCTIONS, supra note 41, at ch. 3300.2. The Briggs-factors instruction includes a comment stating, “Note: Use only those portions of the instruction supported by the evidence.” Id.
77. The question, under Iowa’s pattern civil jury instructions, is whether a defendant has abused the corporate privilege. See id. at ch. 3300.1. That finding is made based on “[f]actors that tend to establish abuse of the corporate privilege[. which] include [the six Briggs factors]. See id. at ch. 3300.2; see also IOWA CIVIL JURY INSTRUCTIONS, supra note 67, for a full reproduction of the pattern instructions.
Iowa appellate decision holds, that the enumerated Briggs factors are not exclusive.\textsuperscript{78} That possibility is sobering, given that, as Justice McDonald has critically observed, one can find authorities from other states listing “at least nineteen factors, plus any other evidence that might be relevant in a totality of the circumstances test.”\textsuperscript{79}

D. The Briggs Factors as Applied by the Iowa Courts

Although there is precedent in Iowa suggesting courts may grant piercing relief whenever recognition of the entity would be inequitable,\textsuperscript{80} the Briggs factors are the predominant piercing criteria Iowa courts apply.\textsuperscript{81} It thus makes sense to examine those factors and the decisions applying them to see whether any predictable patterns emerge.

1. Control

Iowa’s pattern jury instructions for piercing cases require a finding that the defendant was a shareholder of the corporation, in addition to a finding that the shareholder abused the corporate privilege.\textsuperscript{82} This consideration

\textsuperscript{78} Boyd v. Boyd & Boyd, Inc., 386 N.W.2d 540, 544 (Iowa Ct. App. 1986). The court cites Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, from which the Briggs court adopted its piercing factors, stating: “Nowhere in Lakota is its listing claimed to be an exclusive or even an exhaustive one. Rather, no precise formula is available to predict when a court should disregard the corporate entity . . . .” Boyd, 386 N.W.2d at 544 (citing Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, 519 F.2d 634 (8th Cir. 1975).


\textsuperscript{80} Boyd, 386 N.W.2d at 544 (noting the veil may be pierced “when recognition of the entity would work inequitably against one or more groups of creditors of the enterprise”) (citing 6 EDWARD R. HAYES, IOWA PRACTICE SERIES: BUSINESS ORGANIZATIONS § 886, at 308 (2d ed. 1985)); see also Benson v. Richardson, 537 N.W.2d 748, 762 (Iowa 1995) (“Where equity requires us to examine the purposes of a corporation, we are not bound by forms, fiction, or technical rules . . . .”); Wescott & Winks Hatcheries v. F.M. Stamper Co., 85 N.W.2d 603, 607 (Iowa 1957) (stating disregard of the corporate entity is “an equitable prerogative to circumvent its improper use”).

\textsuperscript{81} See IOWA CIVIL JURY INSTRUCTIONS, supra note 41, at ch. 3300.2.

\textsuperscript{82} Id. at ch. 3300.1.
adds an appropriate control element to the piercing inquiry that reflects an effort to identify those responsible for situations that justify piercing.\(^{83}\)

Professor Gevurtz explains:

Control also has a role to play in the closely held corporation context. We may find a situation in which one shareholder (or group of shareholders) is in control of the corporation, while one or more minority shareholders are (voluntarily or not) passive. Assuming some fraud or injustice creates grounds to pierce, the controlling shareholders, who presumably committed the fraud or created the unjust situation, should be liable, while the passive shareholders, unless they did something wrong, should not. In other words, there is wisdom in the traditional conjunctive formulation. The “fraud or injustice” element tells the court when to pierce, the control element tells it against whom.\(^{84}\)

The control element helps explain why the piercing remedy is typically applied only in the closely held corporation and parent-subsidiary contexts.\(^{85}\) In both of those situations, shareholders are in a position to exert meaningful control over corporate affairs.\(^{86}\)

Although the Briggs court did not list the right to control a corporation as a piercing factor, the court’s application of piercing relief shows the importance of that issue.\(^{87}\) Starr had three shareholders, all of whom were apparently also officers and directors, but only Scott and Robert were active in Starr’s affairs.\(^{88}\) The trial court pierced the veil as to both of them but not Martha, the third shareholder.\(^{89}\) The Iowa Supreme Court disagreed:

But Martha, as an officer and owner of a close corporation is not individually immune from personal liability for actual damages under the doctrine which permits piercing the corporate veil. As a major corporate officer she could not avoid liability by emulating the three fabled monkeys, hearing, seeing and speaking no evil. Nor could she ignore the reality Starr Sales had evaded the most basic aspects of

83. See id.
84. Gevurtz, supra note 9, at 866.
85. Thompson, supra note 10, at 1039.
86. See Gevurtz, supra note 9, at 866.
88. Id. at 807.
89. Id. at 808.
corporate existence . . . . For example, she had a responsibility to know Starr Sales was without initial capital and that corporate books were nonexistent . . . .

When the separate entity privilege is denied, as it should be in this situation, it is clear a shareholder or equitable owner who is also a major officer of a close corporation ordinarily cannot escape personal liability.90

In essence, the court granted piercing relief against Martha on the theory that she had a right to control Starr as an officer and owner and thus bore some responsibility for Starr’s inability to pay its creditors.91

2. Undercapitalization

It is a fair generalization that U.S. courts consider the adequacy of corporate capital when applying piercing analysis.92 The Iowa courts certainly do so under the Briggs factors.93 But Iowa’s business association laws no longer include any minimum capital requirements, so why is capitalization, or undercapitalization to be more precise, relevant? Briggs, one of the few Iowa decisions offering an explanation, quotes the following rationale from Ballantine on Corporations:

If a corporation is organized and carries on business without substantial capital in such a way that the corporation is likely to have no sufficient assets available to meet its debts, it is inequitable that shareholders should set up such a flimsy organization to escape personal liability. The attempt to do corporate business without providing any sufficient basis of financial responsibility to creditors is an abuse of the separate entity and will be ineffectual to exempt the shareholders from corporate debts. It is coming to be recognized as the policy of the law that shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for its prospective liabilities. If capital is illusory or trifling compared with the business to be done and the risks of loss, this is a ground for denying the separate entity privilege.94

90. Id. at 811 (citations omitted).
91. See id.
92. See id. at 810 (noting inadequate capitalization is a factor for the court to consider); see generally William P. Hackney & Tracey G. Benson, Shareholder Liability for Inadequate Capital, 43 U. Pitt. L. Rev. 837 (1982).
93. Briggs, 262 N.W.2d at 810.
94. Id. (quoting Henry W. Ballantine, Ballantine on Corporations 302
The passage suggests that adequate capitalization is a quid pro quo of sorts for limited liability, a piercing rationale that, as discussed below, may not hold up as a sound justification for piercing in all cases.95

Turning to Iowa decisions applying this piercing factor in addition to Briggs,96 courts have cited inadequate capitalization as a factor supporting piercing in several cases where there was no equity capital at all.97 No-capital decisions, of course, provide little guidance on how much capital is sufficient to avoid piercing, and while a few Iowa cases refuse to pierce—in part because capital was adequate—most offer only conclusory statements that there “was no undercapitalization.”98

Somewhat more helpful is an Eighth Circuit decision concluding that an Iowa nonprofit corporation was too thinly capitalized based on its foreseeable business risks.99 But even a “foreseeable needs of the business” capitalization inquiry is problematic. A recent decision where the court refused to pierce, Laddie Nachazel Family Living Trust v. JKLM, Inc., illustrates the difficulty of the determination.100 A family trust sold a

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95. See id.
96. Id. (affirming a piercing verdict and noting testimony from one of the corporation’s shareholders that “there wasn’t any money paid in” or “any assets.”).
97. See, e.g., Van Oort Constr. Co. v. Nuckoll’s Concrete Serv., Inc., 599 N.W.2d 684, 691 (Iowa 1999) (“No stock was ever issued.”); C. Mac Chambers Co. v. Iowa Tae Kwon Do Acad., Inc., 412 N.W.2d 593, 598 (Iowa 1987) (affirming piercing verdict and noting that the sole shareholder “did [not at any time] offer any consideration for his 1,000 shares of stock . . . and by his own admission . . . made no capital contribution to the venture”); Murray v. Conrad, 346 N.W.2d 814, 820 (Iowa 1984) (“The corporation was not capitalized, and no stock was ever issued.”); Keith Smith Co. v. Bushman, No. 15-0347, 2015 WL 8364910, at *9–10 (Iowa Ct. App. Dec. 9, 2015) (affirming a jury decision piercing the veil of a limited liability company and noting inadequate capitalization as a relevant factor).
98. See, e.g., Nw. Nat’l Bank of Sioux City v. Metro Ctr., Inc., 303 N.W.2d 395, 398–99 (Iowa 1981) (reversing the trial court’s piercing decision and noting, among other factors, that there was no claim of undercapitalization); Beck v. Equine Estates Dev. Co., 537 N.W.2d 798, 801 (Iowa Ct. App. 1995) (reversing a piercing decision and finding “no evidence showing Equine was continually undercapitalized”).
99. HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 941 (8th Cir. 2007) (affirming a jury’s piercing decision) (“By being in the business of constructing a stadium, TSF needed to be sufficiently capitalized so TSF could pay its debts even if the stadium project failed. TSF never had sufficient capital to pay for the stadium’s design in the event the stadium was not built.”).
restaurant to a corporate buyer that later defaulted on its payment obligations. In piercing litigation against the corporation’s controlling owner, the trust’s expert testified that the corporation financed the purchase with excessive debt, including loans from a related entity that a bank lender would not have made. The trial court nonetheless concluded that capital was adequate based on opposing expert testimony that the level of debt financing used for the restaurant purchase was “not a problem” in the context of “a small family corporation.” The court also considered it relevant that the corporation’s initial capital and borrowings sustained the business for two years after formation. The appeals court affirmed the decision not to pierce but disagreed with the trial court’s conclusion that capital was adequate, noting that the corporation had 40 times as much debt as equity after it purchased the restaurant.

A few points concerning capitalization are clear from the Iowa cases. For example, while there is room for argument about whether shareholder loans and guarantees qualify as capital, at least one Iowa decision sensibly held that liability insurance counts as capital when the piercing plaintiff is a tort victim. Moreover, in accord with the prevailing view of scholars and cases from other states, Iowa piercing decisions assess the adequacy of initial capital rather than capital maintenance over time, thus suggesting that when business operations founder, owners are not obligated to replenish equity in

101. Id. at *1.
102. Id. at *2.
103. Id. at *3.
104. Id.
105. Id. at *4.
106. See Gevirtz, supra note 9, at 890 (noting courts have “had difficulty” deciding whether and to what extent shareholder loans and guarantees count as capital).
107. Moyle v. Elliott Aviation, Inc., No. 05-040, 2006 WL 468764, at *3 (Iowa Ct. App. Mar. 1, 2006) (noting that while airline company’s $40 million insurance policy alone did not prove proper capitalization, the policy did help establish that no exceptional circumstances justified piercing); see also Radaszewski ex rel. Radaszewski v. Telecom Corp., 981 F.2d 305, 310 (8th Cir. 1982) (applying Missouri law) (“Insurance is unquestionably relevant on the issue of ‘undercapitalization.’ The existence of insurance goes directly to the question of the subsidiary’s financial responsibility. If a parent has established a financially responsible subsidiary, then that subsidiary is not ‘undercapitalized’ in the only sense that matters for [piercing analysis].”).
order to maintain limited liability.\textsuperscript{108} Finally, inadequate capitalization alone may not be a sufficient reason to pierce.\textsuperscript{109}

One criticism of Iowa courts’ use of capitalization as a piercing criterion is that the state’s piercing precedent ignores a distinction most legal scholars find important—the difference between voluntary and involuntary corporate creditors.\textsuperscript{110} Voluntary or “contract” creditors choose to do business with the corporation and have the opportunity to protect themselves against nonpayment risks by investigating corporate credit and seeking collateral and personal guarantees.\textsuperscript{111} Even if a corporation was undercapitalized, the argument goes, if the creditor failed to take these actions, imposing shareholder liability through piercing improperly upsets

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\item \textsuperscript{108} A number of recent decisions from the Iowa Court of Appeals reflect this view. See, e.g., Algreen v. Gardner, No. 17-0104, 2018 WL 3057438, at *5 (Iowa Ct. App. June 20, 2018) (“The relevant inquiry is the capital structure of the entity at or near the time of incorporation.”); Tortenson v. Birchwood Estate, L.L.C., No. 16-0118, 2017 WL 1086222, at *9 (Iowa Ct. App. Mar. 22, 2017) (“The fact that the Tortensons at some point in time discontinued providing capital . . . is not significant to the issue of whether TL was initially adequately capitalized.”); Gilleard v. Nelson, No. 03-1496, 2005 WL 2756042, at *3 (Iowa Ct. App. Oct. 26, 2005) (affirming piercing decision where corporation “was undercapitalized at the moment of incorporation”); Midwest Fuels, Inc. v. JP & K, Inc., No. 03-0218, 2004 WL 358291, at *2 (Iowa Ct. App. Feb. 27, 2004) (affirming summary judgment against piercing claimant and agreeing with district court’s conclusion that “there were adequate funds available at the inception of the corporation to purchase [the business]”); see also Minger Constr., Inc. v. Clark Farms, Ltd., No. 14-1404, 2015 WL 7019046, at *10 (Iowa Ct. App. Nov. 12, 2015) (McDonald, J., concurring in part and dissenting in part) (“The majority does not identify a single piece of evidence regarding the capital structure of Clark Farms at or near the time of incorporation.”).
\item \textsuperscript{109} See, e.g., Laddie Nachazael Family Living Tr. v. JKLM, Inc., No. 16-2045, 2018 WL 739266, at *4 (Iowa Ct. App. Feb. 7, 2018) (“Even taking undercapitalization into account, we find the Trust did not present sufficient evidence to show exceptional action was required. The balance of evidence shows JKLM was not operated as a mere shell and existed for a legitimate business purpose. Having shown no fraud or injustice, we determine the corporate veil should not be pierced.”). This is generally true in other states as well. See, e.g., Gevurtz, supra note 9, at 882–83 (citing scant California precedent to the contrary).
\item \textsuperscript{110} As Professor Gevurtz notes, “Innumerable writers over the years have argued that courts should draw a distinction between piercing claims asserted by voluntary (or contract) creditors of the corporation and involuntary (or tort) claimants against the corporation.” Gevurtz, supra note 9, at 858. Robert W. Hamilton, my law school Business Associations teacher, was one of the first commentators to call attention to this distinction. See Robert W. Hamilton, The Corporate Entity, 49 TEX. L. REV. 979, 984–85 (1971).
\item \textsuperscript{111} See Hamilton, supra note 110, at 984.
\end{itemize}
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the original deal—the understanding that only the corporation was to be liable.\textsuperscript{112}

Iowa cases have yet to apply the distinction between voluntary and involuntary creditors with any force when assessing capitalization as a piercing factor. For example, the Eighth Circuit, applying Iowa law, rejected the argument that architects who contracted to supply design services to a thinly capitalized nonprofit corporation “assumed the risk” of doing so.\textsuperscript{113} However, at least one Iowa jurist has signaled that the distinction is important. In \textit{Keith Smith Company, Inc. v. Bushman},\textsuperscript{114} a limited liability company piercing decision by the Iowa Court of Appeals, Justice (then Judge) McDonald stated in dissent:

I would hold personal liability should not be imposed on members of an LLC for the LLC’s obligations on the basis of inadequate capitalization of the LLC where the judgment creditor’s claim arises in contract, where the judgment creditor had the opportunity to obtain financial statements and other credit information prior to entering the contract, where the judgment creditor had the opportunity to price and allocate the risk of loss by requesting personal guaranties or other security, and where the judgment creditor failed to do so.\textsuperscript{115} If one reconsiders the \textit{Briggs} factors with voluntary and involuntary creditor distinctions in mind, there is room for improvement on evaluations of capitalization. For the reasons Justice McDonald outlined in \textit{Bushman},

\textsuperscript{112} See \textit{id.}  
\textsuperscript{113} \textit{HOK Sport, Inc. v. FC Des Moines, L.C.}, 495 F.3d 927, 938 (8th Cir. 2007) (“[T]he appellate court [in an Illinois case] noted, in dicta, nonprofit corporations had no duty to be capitalized under Illinois law and the plaintiffs had assumed the risk of nonpayment by dealing with a thinly capitalized nonprofit corporation. We disagree with the dicta . . . .” (internal citations omitted)).  
\textsuperscript{115} \textit{id.} at *13 (McDonald, J., concurring in part and dissenting in part). In addition, at least two Iowa cases found failure to observe corporate formalities irrelevant where that failure did not confuse the creditor about whether it was the corporation or its shareholders who sought credit. \textit{See Tannahill v. Aunspach}, 538 N.W.2d 871, 874 (Iowa Ct. App. 1995) (reversing the trial court’s decision to pierce a corporate lessee’s veil despite its owner’s failure to observe formalities, reasoning that the failure to adhere to formalities did not lead the lessor to believe the transaction was a personal one); \textit{Ross v. Playle}, 505 N.W.2d 515, 517 (Iowa Ct. App. 1993) (affirming the trial court’s refusal to pierce corporation’s veil where creditor knew the shareholder “was buying all merchandise for the corporation”).
the amount of capitalization—whether at the corporation’s inception or thereafter—should be irrelevant to the piercing claim of a creditor who knowingly extended credit to the corporation after an opportunity to investigate that issue.\textsuperscript{116}

Of course, not all voluntary creditors are the same. It may be impractical for some, such as employees or short-term trade creditors, to protect against corporate insolvency by seeking guarantees or collateral.\textsuperscript{117} A court should therefore be cautious before concluding a creditor has assumed the risk of undercapitalization simply because the creditor’s claim is based in contract.

And for any voluntary creditor, undercapitalization may still be relevant if those controlling the entity misrepresented its financial situation. Moreover, undercapitalization puts all voluntary creditors at special risk for fraudulent conveyances and similar improper transfers of company assets by controlling owners. As Part III explains, both of these situations are solid justifications for piercing, and evidence of undercapitalization might thus be relevant to establish them.\textsuperscript{118}

Tort victims and similar involuntary creditors, of course, have no opportunity for self-protection.\textsuperscript{119} As Professor Gevurtz has observed, “the direct relevance of inadequate capitalization is much easier to see” in piercing cases by tort claimants because “[i]nadequate capitalization externalizes the costs of accidents.”\textsuperscript{120} There are very few reported Iowa piercing cases involving tort creditors.\textsuperscript{121} But when cases do arise, undercapitalization should be an important consideration, and a failure

\textsuperscript{116.} See Bushman, 2015 WL 8364910, at *10–14.

\textsuperscript{117.} For example, when teaching law school piercing cases, after introducing the voluntary and involuntary creditor distinction, I often ask students who clerk for local law firms whether those firms are organized as limited liability entities. The answer is universally yes. I then ask whether these students have asked any of the principals of the firms for personal guarantees their salary will be paid. After nearly 30 years of teaching, no hands have gone up yet.

\textsuperscript{118.} See infra Part III.

\textsuperscript{119.} See Gevurtz, supra note 9, at 887.

\textsuperscript{120.} See id.

\textsuperscript{121.} The Author searched “‘pierce’ w/5 ‘veil’” in the Iowa Westlaw database on May 15, 2019, for decisions discussing piercing claims and found 60 cases, only 5 of which pertained to tort claims.
to maintain adequate insurance for foreseeable liability risks is likely the best measure, regardless of what the corporation’s initial capital was.  

3. Corporate Formalities

Looking to other Briggs factors that courts deem important, the fifth, failure to observe corporate formalities, has also traditionally been considered a key justification for piercing. Thus, it is not surprising that Iowa cases applying the Briggs criteria consider whether corporate participants followed internal governance procedures such as issuance of stock, adoption of bylaws, election of directors and officers, and regular shareholder and director meetings.

However, there are good reasons to question the link between formalities and the piercing remedy. For example, statutes regulating some Iowa corporations and the laws governing all Iowa limited liability companies generally authorize governance with very few formalities and further expressly provide a failure to follow formalities does not trigger personal liability. As for business associations that are not statutorily

122. See Gevirtz, supra note 9, at 893–94 (discussing possible relevant measures for adequacy of insurance and proposing the amount “a reasonable person seeking to protect her own assets from the potential tort liabilities of this business [would] have purchased”).

123. See id. at 866 (“Among the bramble which has grown up around the doctrine of piercing the corporate veil is the notion that a major factor in the courts’ decisions is the non-observance of so-called corporate formalities.”).

124. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 942 (8th Cir. 2007) (citing an Iowa nonprofit corporation’s failure to follow formalities as evidence supporting a jury’s piercing verdict); Van Oort Constr. Co. v. Nuckoll’s Concrete Serv., Inc., 599 N.W.2d 684, 691 (Iowa 1999) (affirming the trial court’s finding that a shareholder violated a covenant not to compete by engaging in a competitive business under the auspices of a corporation he had formed) (“No stock was ever issued. No tax returns were ever filed. The corporation did not collect or pay any employment taxes or social security. Randall [the sole shareholder] did not observe corporate formalities . . . .”); Nw. Nat’l Bank of Sioux City v. Metro Ctr., Inc., 303 N.W.2d 395, 398–99 (Iowa 1981) (reversing a lower court’s piercing decision after noting the shareholders had maintained their corporation as a separate and distinct entity from themselves and had preserved separate financial accounts).

125. IOWA CODE § 489.304(2) (2019) (prohibiting courts from considering a limited liability company’s failure to observe formalities as a ground for imposing liability on members or managers); see id. §§ 490.732(1), (6) (authorizing Iowa corporations to dispense with normal governance arrangements if shareholders unanimously agree and expressly stating that any resulting failure to observe formalities is not a ground for shareholder liability).
authorized to dispense with formalities, some courts have been lenient about compliance as it relates to piercing.126 In one recent case, shareholders attempted to remedy previous failures to hold meetings by authorizing, after a piercing case was filed, various ratification measures.127 The court did not sanction these steps as a cure for the formality problems, but it nonetheless concluded that the procedural irregularities “substantially complied with normal business practices.”128 If that level of formalities is sufficient for Iowa piercing analysis, the requirement is meaningless.

More fundamentally, one can question why a piercing plaintiff—an outsider to the business entity—should care whether controlling owners observed formalities. In the case of the typical corporate creditor’s piercing claim, how would the plaintiff have been any better off if formalities had been observed? Thus, some commentators question whether formalities should be a piercing factor and suggest that failure to observe formalities is simply added “make-weight” support for piercing decisions reached on other grounds.129

Even if a failure to observe formalities is of questionable merit as a piercing consideration, that does not mean such a failure is never relevant in a piercing case. For example, evidence that a corporation issued no stock (a corporate formality) may be the easiest way to show that the company had no equity capital. A corporation’s distribution of assets to shareholders with no formal dividend declaration by the board may mask the board’s failure to comply with statutory restrictions on dividends that protect creditors.130 And if shareholders fail to observe formalities to such an extent that third parties are confused about the corporation’s very existence or about who stands behind corporate credit, piercing might be appropriate as a remedy for the misrepresentation. In this regard, it is worth noting Iowa courts have refused

127. Id.
128. Id. at *4.
129. See, e.g., Gevurtz, supra note 9, at 867 (“Reading ‘between the lines’ of judicial opinions is, by definition, a speculative undertaking; still, one gets the impression reading piercing decisions that the invocation of the defendant’s failure to observe corporate formalities is often a make-weight recited in support of a decision reached on other grounds.”); see also Thompson, supra note 10, at 1067 (finding courts mentioned the failure to follow formalities in only 20 percent of the contract cases and 11 percent of the tort cases where the veil was pierced).
130. See, e.g., IOWA CODE § 490.640(3) (forbidding distributions to shareholders if the corporation is insolvent or would become insolvent as a result of the distribution).
to pierce in at least two cases, despite shareholders’ failure to observe formalities, where the creditor clearly understood it was lending to a corporation.131

4. Separate Books and Separate Finances

Iowa courts also consider whether shareholders have kept the corporation “financially separate” from themselves by maintaining corporate financial records and distinguishing between individual and corporate funds and obligations (Briggs factors two and three).132 In Iowa cases citing these omissions, shareholders who commingle personal financial affairs with those of their corporations often fail to observe corporate formalities as well.133 But financial commingling is potentially relevant to

131. In Ross v. Playle, for example, the sole shareholder, director, and officer of a corporation failed to follow corporate formalities in connection with the issuance of purchase orders, but the creditor knew that the shareholder was “buying all merchandise for the corporation.” Ross v. Playle, 505 N.W.2d 515, 518 (Iowa Ct. App. 1993). The Iowa Court of Appeals affirmed a trial court finding this evidence was an insufficient basis for piercing the corporate veil. Id. Similarly, in Tannahill v. Aunspach, the shareholder and president of a corporation failed to adhere to corporate formalities when entering into a rental transaction on the corporation’s behalf and did not object when the lessor failed to include references to the corporation in related documentation. Tannahill v. Aunspach, 538 N.W.2d 871, 874 (Iowa Ct. App. 1995). But the Iowa Court of Appeals reversed the trial court’s decision to pierce the corporate veil, reasoning that the shareholder’s failure to adhere to formalities and the absence of corporate references did not mislead the lessor into believing the transaction was a personal one. Id.

132. See, e.g., Murray v. Conrad, 346 N.W.2d 814, 820 (Iowa 1984). The court affirmed a trial court decision to treat corporate assets as if they belonged to the corporation’s sole shareholder for purposes of a security agreement the shareholder had signed by stating:

The factfinder could find [the corporation] was a mere shell established by [the sole shareholder] to hold his distributorship license. The corporation was not capitalized, and no stock was ever issued. No corporate books were kept. Corporate funds were commingled with funds of [the sole shareholder] individually and with funds of other . . . corporations.

Id.; cf. Nw. Nat’l Bank of Sioux City v. Metro Ctr., Inc., 303 N.W.2d 395, 398–99 (Iowa 1981) (reversing a lower court’s piercing decision after noting the shareholders had maintained their corporation as a separate and distinct entity from themselves and had preserved separate financial accounts).

133. See, e.g., Van Oort Constr. Co. v. Nuckoll’s Concrete Serv., Inc., 599 N.W.2d 684, 691 (Iowa 1999) (affirming the trial court’s finding that a shareholder violated a covenant not to compete by engaging in a competitive business under the auspices of a corporation he had formed) (“No stock was ever issued. No tax returns were ever filed.
piercing for different reasons other than formalities. One obvious concern is that commingling owner and entity finances or failing to maintain separate financial records will make it difficult (or even impossible) for creditors to trace corporate assets.134 And, as with paying dividends to shareholders without following corporate formalities, financial commingling may disguise dividends to shareholders that violate insolvency restrictions on distributions.135

5. Corporation Used to Promote Fraud or Illegality or Corporation as a Mere Sham

The fourth and sixth factors on the Briggs list of piercing considerations, whether controlling owners used the corporation to promote fraud or illegality or whether the corporation was a mere sham, are the most difficult to pin down with any clear meaning. Iowa cases frequently use these terms to describe the conclusion that the veil should be pierced or not.136 As Part III explains, the fraud and sham labels are probably better understood as descriptions of independent policy justifications for piercing rather than as piercing factors.

III. THE NEED FOR POLICY GUIDANCE IN IOWA PIERCING DECISIONS AND A PROPOSED TAXONOMY FOR PIERCING PRECEDENT

A national empirical study breaking down piercing decisions by states reports that Iowa courts pierce in 39.39 percent of the reported cases, a smaller success rate for plaintiffs than the national average of 48.51 percent.137 But what distinguishes a successful Iowa piercing claim from an unsuccessful one? Piercing precedents under the Briggs factors are both hard

134. DORE, IOWA PRACTICE, supra note 1, § 15:4.
135. See id.
136. See, e.g., Van Oort Constr. Co., 599 N.W.2d at 691 (affirming the decision to pierce a sham corporation that the shareholder used to circumvent a covenant not to compete); Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 811 (Iowa 1978) (“There was little evidence Starr Sales was ever intended to be or operated as a valid corporation. It was a sham, and under the above criteria cannot shield the officers and directors from liability arising out of their conduct.”); see also Crosby v. Koenig, No. LACV 38232, 2001 WL 34780403, at *2 (Iowa Dist. Ct. Oct. 31, 2001) (“Koenig Enterprises is . . . not a mere sham or shell of a corporation.”).
137. Oh, Veil-Piercing, supra note 44, at 115 (listing Iowa piercing rate in table), 107 (discussing national success rate in piercing cases).
to predict and critique. As Part II explains, criteria such as undercapitalization, observance of formalities, or financial commingling may be relevant in some situations but not others. Yet *Briggs* apparently calls for application of these factors in every case, although decisions recognize that the plaintiff need not establish all factors to obtain a piercing verdict and that factors not listed in *Briggs* might also be relevant.

The problem lies not with the *Briggs* factors themselves but with the test’s failure to identify the overarching purposes of piercing relief in the first place. Both Iowa piercing decisions and the state’s civil jury instructions repeat *Briggs*’s mantra that piercing is appropriate for a corporation that is “a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice.” But these terms are merely “examples” of the “exceptional circumstances” where Iowa courts will disregard a corporate entity. None explain the policy objectives behind the concept of abuse of the corporate privilege. And without a clear articulation of those objectives, it is difficult to understand the logic or relative importance of the various *Briggs* factors. This Part of the Article attempts to remedy that problem, starting with a proposed taxonomy for organizing Iowa piercing precedent based on the public policy grounds that most legal scholars generally agree justify use of the remedy.

The task is not easy, though. There would be a pleasing symmetry to veil piercing if one could neatly link application of the remedy to policies supporting recognition of business entities as artificial legal persons and the associated limited liability rules. Unfortunately, although both of the latter concepts are firmly entrenched in business association law, the rationales offered are many and varied. Some scholars defend separate entity status for businesses and the related limited liability rules on economic efficiency

138. See supra Part II.
139. See, e.g., Fazio v. Brotman, 371 N.W.2d 842, 846 (Iowa Ct. App. 1985) (“The instruction tells the jury they can pierce the corporate veil only when there are exceptional circumstances and when any one of the six items is established. This accurately sets out Iowa law in this area.”).
140. See, e.g., Team Cent., Inc. v. Teamco, Inc., 271 N.W.2d 914, 923 (Iowa 1978) (affirming a piercing verdict where “[t]he trial court detailed twelve circumstances to be considered along with ‘all other evidence in the case’ in determining if the corporate veil should be pierced”).
141. See generally Briggs, 262 N.W.2d 805.
142. See, e.g., In re Marriage of Ballstaedt, 606 N.W.2d 345, 349 (Iowa 2000). For the text of Iowa’s Pattern Jury Instructions for piercing cases, see supra note 67.
143. Briggs, 262 N.W.2d at 810.
grounds. Others suggest that limited liability is rooted, at least in part, on the need to democratize business ownership. There are other explanations as well. For purposes of this Article, the critical point is that if there is no consensus about the justifications for treating business organizations as separate entities or for the principle of limited liability, one can hardly expect to find a single explanation for the piercing exception.

There have been notable efforts to discern patterns in decisions suggesting a coherent piercing doctrine. Following a tradition Professor Robert Thompson started in 1991, numerous scholars have analyzed large data sets of reported piercing decisions. Those investigative efforts have clarified a few matters. For example, Professor Thompson confirms courts do not use piercing to reach shareholders of public companies and instead limit the doctrine to owners of closely held entities or parent corporations that own subsidiaries. Beyond these basic points, however, there has been a surprising amount of disagreement about the explanatory power of the various empirical studies. One especially troubling finding in Thompson’s work is that contract creditors enjoy more success in piercing cases than tort creditors, a pattern that contradicts the voluntary–involuntary creditor distinction that so many corporate law scholars find important. As one scholar concludes after identifying potential problems with the efforts to date, “Existing empirical data . . . have provided only part of the story about veil-piercing litigation.”

Looking beyond empirical studies of piercing, several commentators have offered a very useful insight: piercing is not a coherent doctrine that


145. See, e.g., Goforth, supra note 8, at 85 (“[W]ithout [limited liability] for investors only the elite would be able to participate in economic endeavors, because only they would have the time to oversee their investments and sufficient sums to invest so that their time would be well spent in monitoring the business.”).

146. For a recent summary of the leading justifications for limited liability in business association law, see Huss, supra note 13, at 103–08.

147. Thompson, supra note 10, at 1036.

148. Professor Thompson’s initial study is cited in note 10, supra. For a list of the studies that followed, see Garcia-Gallont & Kilpinen, supra note 10, at 1230–31 (describing empirical studies of piercing cases).

149. Thompson, supra note 10, at 1039.

150. Id. at 1058. However, Professor Peter Oh has recently recast Thompson’s data with different results. See Oh, Veil-Piercing, supra note 44, at 126.

151. See, e.g., Oh, Unbound, supra note 13, at 107.
flows from rationales supporting recognition of entities and related limited liability principles; instead, piercing is a remedy.152 Thus, one possible route to analytical consistency in piercing decisions is to identify—at least in broad strokes—the types of situations warranting application of the remedy. Drawing on the work of several corporate law scholars, this Part of the Article posits that piercing is an appropriate remedy when those controlling a corporation or similar entity do one or more of the following: (1) use the corporate form to evade obligations imposed on the owners by other legal schemes; (2) engage in fraud, misrepresentation, and similar deceptive conduct to obtain corporate credit; or (3) engage in abusive self-dealing that improperly subordinates creditor claims to entity assets. The discussion that follows explains these policy goals of piercing and evaluates both available Iowa piercing case law and the Briggs factors in light of those goals.

A. Piercing When the Corporation Allows Controlling Owners to Evade Legal Obligations

A common mantra in piercing cases is that courts should pierce the corporate veil when shareholders organize a corporation in order to evade their legal obligations. The point is well-illustrated by an early (1903) piercing decision, United States v. Milwaukee Refrigerator Transit Company.153 The case centered on an Interstate Commerce Commission (ICC) enforcement action against Milwaukee, a company organized by the shareholders of Pabst Brewing.154 Milwaukee acted as Pabst’s agent in placing beer shipping orders, and carriers paid commissions to Milwaukee when they received the orders.155 The Government’s theory was that the “commissions” paid to Milwaukee—a company owned and controlled by Pabst shareholders—were illegal carrier rebates that improperly discounted shipping fees Pabst was required to pay under ICC tariffs.156 To reach that result, the Government had to persuade the court to disregard the legal separation between Milwaukee and Pabst.157 The court agreed to do so,

152. See, e.g., id. at 90 (“Veil-piercing is an equitable remedy. This simple insight has been lost over time.”); Macey & Mitts, supra note 12, at 100 (“Our thesis is simple. We begin with the observation that the so-called ‘doctrine’ of piercing the corporate [veil] is not a doctrine at all. It is a remedy.”).


154. Id. at 248–50.

155. See id. at 249.

156. See id. at 250–51.

157. See id. at 255.
invoking a corporate disregard standard that should ring familiar given the frequency of its subsequent citation:

If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.158

According to two corporate scholars, Jonathan Macey and Joshua Mitts, policing shareholders who use the corporate form to evade otherwise applicable legal constraints is one of the three key policy goals supporting use of the piercing remedy.159 Citing illustrative examples from a variety of statutory enforcement cases and further support from an empirical analysis of piercing decisions from across the country, Macey and Mitts argue U.S. courts may pierce—or decline to pierce—“[to achieve] the goals of a particular regulatory or statutory scheme.”160 Professor Franklin Gevurtz comes to the same conclusion.161 Writing two decades before Macey and Mitts, he observes that while most piercing claims are brought “in order to impose liability for the company’s debts on its shareholders,” some piercing decisions “disregard the separate entity status of a corporation for other purposes,” including to prevent shareholders from using the corporation to “gain[] an advantage under a statute or contract.”162

1. Iowa Examples

According to the Eighth Circuit, Iowa courts will pierce a corporation that is the alter ego of its shareholders if the entity is “merely an instrumentality or device set up to ensure the avoidance of . . . legal obligations.”163 Briggs endorses this same piercing policy objective in factor six, the corporation is a mere sham, and factor four, “the corporation is used

158. Id. (emphasis added).
159. Macey & Mitts, supra note 12, at 101–02.
160. Id. at 102.
161. Gevurtz, supra note 9, at 905.
162. Id.
163. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935 (8th Cir. 2007) (citing Benson v. Richardson, 537 N.W.2d 748, 761 (Iowa 1995)) (applying Iowa law).
to promote . . . illegality.”164 And one can easily identify Iowa decisions disregarding corporations that shareholders used to evade legal obligations.

In Benson v. Richardson, for example, when a physician and his wife formed a professional corporation to shield earnings that would otherwise have been garnished by the physician’s judgment creditors, the Iowa Supreme Court affirmed a decision piercing the corporate veil, concluding the entity was “merely an instrumentality or device set up to ensure the avoidance of the legal obligations.”165 The court also affirmed piercing verdicts in Van Oort Construction Co. v. Nuckoll’s Concrete Service, Inc., where an individual attempted to circumvent a covenant not to compete by working under auspices of a corporation formed for that purpose,166 and in C. Mac Chambers Co. v. Iowa Tae Kwon Do Academy, Inc., where a shareholder transferred the valuable assets of an insolvent business to a new corporation his family used to carry on the same enterprise.167 In re Marriage of Ballstaedt presented the question whether payments made to a divorced father’s wholly owned corporation should be subject to child support withholding orders; the court remanded the case for a veil piercing determination under the Briggs factors.168

State ex rel. Miller v. Internal Energy Management Corp. concerned consumer fraud claims against an out-of-state corporation that deceptively marketed a gas-saving device to Iowa car owners.169 The State included personal liability and piercing claims against some of the corporation’s principals, who then contested personal jurisdiction under the “fiduciary shield” doctrine.170 This shield protects corporate agents from long-arm jurisdiction based on forum activities performed in a representative capacity but does not apply if the corporate principal’s veil is pierced.171 The court

168. See In re Marriage of Ballstaedt, 606 N.W.2d 345, 347–49 (Iowa 2000).
170. Id. at 709.
171. “The underpinning of the fiduciary shield doctrine is . . . that it is unfair to force an individual to defend a suit brought against him personally in a forum with which his only relevant contacts are acts performed . . . for the benefit of his employer.” Id. at 712
explained that piercing to obtain jurisdiction requires a less demanding showing than substantive piercing claims because the underlying issue is whether jurisdiction offends due process. The court thus focused not on traditional piercing criteria but instead on the State’s underlying fraud claims, which the court accepted as true for purposes of evaluating jurisdiction. Because that fraud was perpetrated in Iowa, the court concluded, it was not unreasonable for the individual defendants to expect to be sued there, even though they were out-of-state corporate employees.

The Iowa Supreme Court refused to pierce in one recent case where doing so would have prevented landlords from artificially reducing commercial tax rates. In Krupp Place 1 Co-Op, Inc. v. Board of Review, Iowa residents Larry and Connie Krupp conveyed apartment buildings they owned to a residential cooperative they had organized under Iowa Code Chapter 499A. Although the cooperative then subleased all of the apartment units, none of which were occupied by the Krupps, the cooperative sought taxation of the buildings at lower rates applicable to residential cooperatives. The taxing authorities contended the cooperative should pay taxes at commercial rates under a piercing analysis, since the Krupps’ actual use of the buildings was for rental rather than residential occupancy. The Iowa Supreme Court disagreed, suggesting—incorrectly, in this Author’s view—that Iowa’s piercing remedy might be limited to enforcement of corporate creditor claims.

Interestingly, the court refused to expand Krupp’s scope in a subsequent case. Dolphin Residential Cooperative, Inc. v. Iowa City Board of Review held Krupp’s “organizational test” for residential cooperatives was not satisfied when two Iowa attorneys organized a cooperative and

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172.  Id. at 714 (citing Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 903 (2d Cir. 1981)).
173.  See id. at 716.
174.  See id.
176.  Id. at 15.
177.  See id. at 14.
178.  See id. at 16. The statement is dicta, of course, since the actual rationale for allowing the Krupps’ scheme was the court’s conclusion that Chapter 499A imposed only an “organizational” test for the cooperative, which the Krupps had satisfied, rather than an “actual use” test that required the Krupps to live in the cooperative as well. The court also noted there was no evidence in the record that the Krupps were earning a profit from the cooperative. See id. at 15–16.
immediately turned over its control to their client—an Illinois apartment rental enterprise. Justice Edward Mansfield, who did not participate in *Krupp*, concurred in *Dolphin*'s result but urged that *Krupp* be overruled as well. Emphasizing courts must pay attention to economic substance over form in tax cases, Justice Mansfield explained he would disregard the cooperatives in both *Krupp* and *Dolphin*, as their only purpose was to enable their organizers to evade commercial tax rates.

What is the unifying policy objective of piercing in the decisions discussed above? Plaintiffs did not seek the remedy because the corporation was undercapitalized nor because its principals failed to observe formalities or commingled assets—though that certainly may have occurred. Rather, the alleged abuse of the corporate form was that its principals would avoid otherwise applicable legal obligations if the corporation they organized for that purpose was respected as an entity separate from its principals. Piercing prevented that outcome.

2. Implications for the Briggs Factors

In cases like those described above, it is hard to see why any of the six Briggs factors should be determinative of the decision to pierce. The Iowa Supreme Court recognized this truth in *Internal Energy Management*, where the issue was whether Iowa courts could assert personal jurisdiction over individual corporate participants in a consumer fraud case. As the court explained, when piercing is sought to prevent controlling owners from evading their legal responsibilities, does it really matter how well the corporation was capitalized, whether its assets were commingled with those of its owners, or whether formalities were respected?

179. See *Dolphin Residential Coop., Inc. v. Iowa City Bd. of Review*, 863 N.W.2d 644, 650–53 (Iowa 2015).

180. *Id.* at 653 (Mansfield, J., concurring).

181. *Id.* at 654 (“[W]e have here the opposite [of a residential cooperative]: a single economic enterprise purporting to be divided into independent units in order to get favorable tax treatment. The independent units exist on paper only, and none of the users of services have an ownership interest in the entity. Does this underlying reality matter? I believe it does. There is a well-established doctrine in federal tax law that transactions undertaken only for tax purposes and otherwise lacking economic significance should be disregarded.”).


184. *Id.* (“We conclude that . . . allegations of fraud standing alone are sufficient to
proposal in Dolphin, that Iowa tax policy be determined with reference to economic substance rather than legal form, is to the same effect.185

The lodestar in these piercing cases should not be the Briggs factors but instead the purpose of the underlying legal scheme the piercing remedy seeks to enforce. Reconsidering the Iowa cases discussed in Part III.A.1 above, if a shareholder forms a corporation to evade a noncompete agreement, as occurred in Van Oort,186 the issue should be whether competition under the corporate aegis violates terms to which the shareholder agreed. Along the same lines, when a physician shields nonexempt income from personal creditors by working for a professional corporation controlled by his spouse, as in Benson,187 the effect on those creditors is more relevant than the professional corporation’s capitalization or observance of formalities. And finally, in a case like In re Marriage of Ballstaedt, whether payments to a divorced father’s wholly owned corporation implicate his child support obligations should be determined with reference to family law policies, not corporate law considerations.188

permit a disregard of the corporate entity for jurisdictional purposes. . . . To hold otherwise would mean that an individual contemplating the commission of fraud in other jurisdictions could escape jurisdiction there by simply committing the fraud through a corporation.

Macey & Mitts, supra note 12, at 115 (alteration in original) (citing Carter-Jones Lumber Co. v. LTV Steel Co., 237 F.3d. 745, 749 (6th Cir. 2001)).

185. See Dolphin, 863 N.W.2d at 654.


187. See Benson v. Richardson, 537 N.W.2d 748, 761 (Iowa 1995). The same goes for the successor corporation in C. Mac Chambers Co. v. Iowa Tae Kwon Do Academy, Inc. where shareholders formed an entity so its predecessor could evade creditor claims. C. Mac Chambers Co. v. Iowa Tae Kwon Do Acad., Inc., 412 N.W.2d 593, 395 (Iowa 1987). These cases are discussed in Part III.A.1, supra.

188. See supra Part III.A.1.
In cases where piercing prevents shareholders from escaping their legal obligations, it is, of course, tempting to add weight to a decision to pierce by identifying undercapitalization or a failure to observe formalities, and Iowa courts have done this in nearly all of the foregoing cases. But, in this Author’s view, those considerations confuse the issue. When a piercing claim is based on the contention that shareholders used the corporation to evade obligations imposed by another legal scheme, the Briggs factors deserve consideration only if and to the extent one or more of those factors show evasion of the underlying legal scheme.

B. Piercing to Police Fraud and Misrepresentation

As Professor Gevurtz observes, “[I]t has become customary among both courts and commentators to state that fraud provides grounds to pierce.” Macey and Mitts—and many other scholars—concur with this observation. A second key policy goal of the piercing remedy, they contend, is to combat fraud, misrepresentation, and similar deceptive conduct by those who own or control a business entity. Empirical studies of piercing decisions support the same conclusion.

Unlike the piercing claims discussed in Part III.A.1 where the remedy helped enforce a legal scheme that existed outside of corporate law, the purpose of piercing in fraud or misrepresentation cases is to provide relief to a creditor of a business entity. In the typical case, the creditor, who was deceived in some respect when dealing with the entity, cannot obtain full payment of the claim because the company lacks sufficient assets. Professor Gevurtz breaks down the fraud justifications for piercing in this situation as follows. Corporate creditors should be entitled to pierce if they are harmed as a result of misrepresentations or deceptive conduct (typically by controlling shareholders but sometimes by corporate management) concerning one of the following: (1) the corporation’s financial status; (2) the corporation’s ability or intent to perform an obligation; or (3) who, other

189. See, e.g., Van Oort Constr. Co., 599 N.W.2d at 691 (citing case facts supporting piercing under the Briggs factors).
190. Gevurtz, supra note 9, at 871.
191. See, e.g., Macy & Mitts, supra note 12, at 101.
192. Id.
193. See, e.g., Oh, Veil-Piercing, supra note 44, at 136 (“Evidence of fraud or misrepresentation is the most popular [piercing] rationale overall.”).
194. See Gevurtz, supra note 9, at 871.
than the corporation, stands behind the obligation.\footnote{Id. at 871–74.} In these cases, Professor Gevurtz explains, piercing relief is a logical remedy for misrepresentations on the theory the defendant “obtained limited liability by fraud.”\footnote{Id. at 886.}

In some cases, of course, intentional misrepresentations concerning corporate finances will establish an independent fraud claim against the individuals involved.\footnote{Like other states, Iowa courts recognize that agents and other persons who work for a business entity are always personally liable for their own torts, but the question is whether the corporate principal is vicariously liable as well. See, e.g., Haupt v. Miller, 514 N.W.2d 905, 907–09 (Iowa 1994); see generally RESTATEMENT (THIRD) OF AGENCY § 7.01 (AM. LAW INST. 2006); Doré, supra note 2.} But just as plaintiffs sometimes pursue rescission, reformation, or constructive trust as an equitable remedy for fraud, piercing may afford more complete relief in an appropriate case.\footnote{See William N. Warren & Sharon F. Fulgham, Equitable Remedies, in BUSINESS AND COMMERCIAL LITIGATION IN FEDERAL COURTS § 130.26 (4th ed. 2018) (listing rescission, reformation, and constructive trust as equitable fraud remedies).} Moreover, establishing fraud can be difficult. Courts sometimes pierce, Macey and Mitts explain, “in order to remedy what appears to be fraudulent conduct that does not satisfy the strict elements of common law fraud.”\footnote{See Mobil Oil Corp. v. Linear Films, Inc., 718 F. Supp. 260, 268 (D. Del. 1989).} The Delaware courts capture this piercing policy goal by requiring plaintiffs to show “[f]raud, or something like it” in order to obtain the remedy.\footnote{Gevurtz, supra note 9, at 874 (“[S]hould the existence of ambiguity or confusion as to who is the obligor be enough to pierce, or must the creditor be able to point to some clear statement which led it to believe that someone other than the corporation was bound by the contract? Closely related to this question is whether the defendant must have intended to mislead or confuse the creditor. To the extent the defendant intended to fool or confuse the creditor, the answer to the question concerning ambiguity or confusion should favor the plaintiff. On the other hand, if this was not the defendant’s intent, the question becomes who, between two sloppy parties, should bear the risk of loss from unintended misunderstandings: the party who created a potentially misleading or confusing situation, or the party who could have checked more carefully? An efficiency analysis might suggest that the defendant was generally in a position to have more cheaply prevented the confusion and hence ought to bear its consequences.”).} Gevurtz concurs, arguing that where evidence of fraud is ambiguous, the piercing remedy appropriately assigns the risks of uncertainty to the corporate participants who were best positioned to prevent confusion on the part of those who dealt with the corporation.\footnote{Macey & Mitts, supra note 12, at 101.}
1. Iowa Examples

Briggs factor four asks whether “the corporation [was] used to promote fraud or illegality.”202 As with factor six (“the corporation is a mere sham”),203 the fraud “factor” is less a piercing criterion than an independent policy justification for the remedy. Briggs itself is a good example.

Recall that Northern—the unpaid creditor—investigated corporate credit before shipping goods to Starr, the corporation that was pierced.204 Northern had also requested Briggs—the shipper—to collect on delivery, but Briggs inadvertently failed to do so.205 Northern’s credit investigation was hampered when some of Starr’s owners substituted credit reports for affiliated entities, creating a false impression that Starr was creditworthy.206 Northern’s collect-on-delivery strategy failed when Starr’s owners misappropriated the delivered goods, taking advantage of Briggs’s failure to collect payment.207 On these facts, piercing was warranted not because Starr’s controlling shareholders failed to capitalize their corporation or failed to observe formalities but because they lied about its financial condition and then misappropriated corporate assets.208

But one may ask, why pierce? Why not simply sue the offenders for fraud? The Briggs plaintiff did that, but piercing was an important additional remedy, since it triggered liability on the part of an inactive shareholder director of Starr who did not participate in the fraud but whose inattention to duties facilitated the other owners’ deception.209

203. Id.
204. Id. at 807.
205. See id. at 808.
206. See id. at 807.
207. See id. at 808.
208. See id. at 811.
209. Id. (“But Martha, as an officer and owner of a close corporation is not individually immune from personal liability for actual damages under the doctrine which permits piercing the corporate veil. As a major corporate officer she could not avoid liability by emulating the three fabled monkeys, hearing, seeing and speaking no evil. Nor could she ignore the reality Starr Sales had evaded the most basic aspects of corporate existence. For example, she had a responsibility to know Starr Sales was without initial capital and that corporate books were nonexistent. When the separate entity privilege is denied, as it should be in this situation, it is clear a shareholder or equitable owner who is also a major officer of a close corporation ordinarily cannot escape personal liability.”).
The piercing decision in Internal Energy Management, discussed in Part III.A.1 above, is also a good example of piercing as a response to fraud. Northeast Iowa Ethanol, L.L.C. v. Drizin, a federal case decided under Iowa law, illustrated the same pattern. Defendant Drizin’s corporation, GSI, assumed control of nearly $4 million escrowed for construction of an ethanol plant. After Drizin and GSI frittered away the funds in a wild series of transactions that completely depleted the escrow account, the court readily approved a piercing remedy against Drizin, citing fraud as the justification.

The Eighth Circuit’s piercing decision in HOK Sport also supports the premise that fraud, or similar deceptive conduct, is an independent policy justification for piercing. The HOK Sport court affirmed a piercing verdict against organizers of an Iowa nonprofit corporation, holding them liable to architects who provided the corporation with design services for a soccer stadium. Among the justifications cited for piercing was the fact that, before the stadium project foundered, the nonprofit’s organizers repeatedly commingled their funds with those of the corporation, enabling the company to pay bills the architects submitted from time to time. Transfers of personal funds to the corporation benefitted the architect creditors to a small degree, of course. But these same transfers were also deceptive insofar as they encouraged the architects to provide several hundred thousand dollars’ worth of additional design services without concern about prospects for future repayment by the undercapitalized entity.

211. See id. at *2–3.
212. Id. at *9 (“[T]his case presents the ‘exceptional circumstance’ warranting the piercing of GSI’s corporate veil and finding Mr. Drizin personally liable for GSI’s misdeeds, as the sole purpose of establishing GSI was to perpetuate fraud.”).
213. HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 936 (8th Cir. 2007).
214. See id. at 942.
215. Id. at 941–42.
216. See id. at 933.
217. See id.; see also Keith Smith Co. v. Bushman, No. 15-0347, 2015 WL 8364910, at *9–10 (Iowa Ct. App. Dec. 9, 2015) (affirming piercing decision in favor of an egg supplier where a series of related companies created by the defendants likely created confusion about which entity was receiving credit). As in HOK Sport, intercompany advances covered initial payments that were later discontinued after the creditor extended additional credit. See id. at *9.
Although Iowa courts have correctly stated on several occasions that fraud is not an essential element of a piercing claim, many decisions refusing to pierce are best explained as cases where the plaintiff could not demonstrate fraud or similar deceptive conduct. In fact, while Iowa courts have not formally embraced assumption of the risk as an element to be considered when deciding piercing claims by voluntary creditors, a number of piercing decisions can be read to support that rule, so long as the creditor was not deceived when extending corporate credit.

2. Implications for the Briggs Factors

How should the considerations listed in Briggs apply when the corporate creditor’s justification for piercing is that the controlling owners engaged in fraud or deception when obtaining the credit? Undercapitalization itself should generally be less relevant than any deception by controlling owners concerning the amount of capitalization (as in Briggs) or prospects for future repayment (as in HOK Sport). Failure to observe formalities or financial commingling may be more relevant but only


219. See, e.g., Laddie Nachazael Family Living Tr. v. JKLM, Inc., No. 16-2045, 2018 WL 739266, at *4 (Iowa Ct. App. Feb. 7, 2018) (“Even taking undercapitalization into account, we find the Trust did not present sufficient evidence to show exceptional action was required. The balance of evidence shows JKLM was not operated as a mere shell and existed for a legitimate business purpose. Having shown no fraud or injustice, we determine the corporate veil should not be pierced.”); Cass v. Sands, No. 05-1008, 2006 WL 229033, at *4 (Iowa Ct. App. Feb. 1, 2006) (“[O]ther than unsupported allegations in the petition, the summary judgment record contains no evidence, disputed or otherwise, that either Miracle Automotive or Miracle Chrysler was used to promote fraud or illegality. Again, we must disagree with the plaintiffs’ assertion that the dealership’s failure gives rise to a reasonable inference of fraud, when the record contains a number of legitimate and undisputed reasons for the failure.”).

220. See, e.g., Tannahill v. Aunspach, 538 N.W.2d 871, 874 (Iowa Ct. App. 1995) (reversing the trial court’s decision to pierce a corporate lessee’s veil despite its owner’s failure to observe formalities, reasoning the failure to adhere to formalities did not lead the lessor to believe the transaction was a personal one); Ross v. Playle, 505 N.W.2d 515, 517 (Iowa Ct. App. 1993) (affirming the trial court’s refusal to pierce corporation’s veil where creditor knew the shareholder “was buying all merchandise for the corporation”); see also Ne. Iowa Co-op v. Lindaman, No. 13-0297, 2014 WL 69605, at *8 (Iowa Ct. App. Jan. 9, 2014) (“The [trial] court concluded ‘the evidence best supports a conclusion that the Co-op failed to follow its own procedures for checking on whether credit should be extended.’ We agree.”).

221. See supra Part III.B.1.
when these practices create confusion on the part of corporate creditors about what assets are available or who is responsible for payment of corporate obligations.\textsuperscript{222} The critical point is that, in these piercing cases, the plaintiff’s evidence should not simply demonstrate the existence of one or more Briggs factors but should also show why those factors justify upending the parties’ bargain that only the corporation was to be liable.

What about short-term trade creditors, employees, and other contract creditors who are not in a good position to investigate before extending corporate credit or tort victims who cannot do so at all? Do fraud or deception theories justify piercing in their favor? While fraud as misrepresentation does not fit, a broader view of deception might work. For example, is it not deceptive when a controlling owner causes a limited liability entity to incur an obligation with knowledge that there is no prospect for repayment? Or when a business’s owners reap financial benefits by failing to insure the entity against foreseeable tort risks and thus avoid internalizing those costs as business expenses? But these justifications for piercing, if they are justifications, may fit better under the final policy goal that supports the remedy, discussed below.

C. Piercing to Remedy Abusive Self-Dealing

The implicit bargain in any business entity regarding its assets is that creditors’ claims come ahead of those of the entity’s owners. Thus, interim distributions to shareholders are improper if a corporation is insolvent or would become so as a result of the distribution.\textsuperscript{223} And when a corporation dissolves, creditors’ claims are to be paid before shareholders take the balance.\textsuperscript{224} Business owners may be tempted to subvert this scheme through abusive self-dealing transactions, as where corporate assets are siphoned to controlling owners without regard to dividend restrictions or commingled with the owners’ assets, effectively putting the property out of reach of corporate creditors.\textsuperscript{225} When these transactions occur, there is a broad consensus among corporate scholars that piercing is an appropriate remedy.

\textsuperscript{222} See, e.g., HOK Sport, Inc., 495 F.3d at 935.
\textsuperscript{224} See id. § 490.1409 (describing directors’ obligation on dissolution to “make reasonable provision for the payment of claims and [thereafter] make distributions of assets to shareholders”).
\textsuperscript{225} See Gevurtz, supra note 9, at 886.
because corporate law offers creditors few meaningful enforcement tools to police corporate distributions that subvert creditor priority rules.226

Professor Gevurtz explains this justification for piercing by positing terms that are implied when a corporation seeks credit:

Principal among terms which one would imply is that the controlling shareholder of the corporation will not be free to do whatever he or she wants with corporate assets. Otherwise, the owner could have the corporation borrow money, take all the money out of the corporation, and leave the creditor unpaid. In essence, the loan then becomes one which says to the owner “pay back if you feel like it,” with no sanction for non-payment other than the possible loss of future loans. This is not the sort of loan we expect persons in a commercial relationship to make.227

This rationale helps justify piercing to protect certain voluntary creditors, such as employees and short-term trade creditors. Because these creditors rarely make express bargains for self-protection, such as guarantees and collateral, the fraud and misrepresentation justification for piercing described in the preceding discussion makes less sense than the rationale offered here.

The abusive self-dealing rationale also helps justify using piercing to protect involuntary creditors like tort victims. Gevurtz explains:

Viewed ex post, if the controlling shareholder has yanked assets out of the corporation, there is less for tort victims to collect. More important, viewed ex ante, if the controlling shareholder knows he or she can yank assets out of the corporation before tort victims can get or enforce a judgment, there is less incentive to insure and to make sure the costs of the corporation’s goods or services fully reflect the likely costs of accidents. At the same time, allowing controlling shareholders untrammeled rights to take corporate property hardly seems necessary in order to achieve the societal goals behind limited liability.228

226. For example, although it is illegal for a corporation to pay dividends to shareholders when insolvent or if the corporation would become insolvent as a result, the prospects for liability claims against directors who approved the dividends are quite remote. See DORÉ, IOWA PRACTICE, supra note 1, § 30:8 (describing the difficult standards that must be established for director liability in this situation).
227. Gevurtz, supra note 9, at 875.
228. Id. at 876.
Macey and Mitts describe the abusive self-dealing justification for piercing in slightly different terms. They characterize the goal of piercing in these cases as preserving “bankruptcy values”:

One of the primary ways that the doctrine of piercing the corporate veil is utilized is to protect against efforts to undermine the integrity of the bankruptcy process, particularly by controlling shareholders who may try various maneuvers on the eve of bankruptcy in order to benefit themselves at the expense of other claimants who are more deserving by dint of their contractual, common law, or statutory rights.229

Laws regulating fraudulent transfers and preferential payments are designed to catch just such maneuvers, of course. But, as with fraud claims, it is sometimes difficult to satisfy the demanding technical proof requirements of these special insolvency remedies, such as identifying exactly when an asset was transferred or when or whether the transferor became insolvent as a result. And while fraudulent transfer remedies are flexible, most are designed to replace the value of an asset that a debtor has improperly transferred and do not afford the broader relief for creditors that piercing does. Thus, as Dean Robert Clark explained many decades ago in his Corporate Law treatise, “Some piercing cases . . . are simply substitutes for fraudulent conveyance actions.”230

1. Iowa Examples

As with cases declining to pierce where there is no evidence of fraud or misrepresentation, the absence of abusive self-dealing probably explains many, if not most, Iowa decisions that decline to pierce the corporate veil. Corporate failures may leave creditors unpaid, but if controlling owners make reasonable efforts to properly capitalize the enterprise, maintain corporate records, and respect creditors’ prior claims to corporate assets, a court should not pierce simply to provide an avenue for those creditors to recover from shareholders. And Iowa courts have refrained from doing so.231

229. Macey & Mitts, supra note 12, at 130.
230. CLARK, supra note 4, § 2.4.1, at 81.
231. See, e.g., Beck v. Equine Estates Dev. Co., 537 N.W.2d 798, 800 (Iowa Ct. App. 1995) (“There is no evidence showing Equine was continually undercapitalized. Its misfortune was inseparably linked to Rosenbergs’ financial collapse.”); Ross v. Playle, 505 N.W.2d 515, 517–18 (Iowa Ct. App. 1993) (“We agree with the district court that Ross provided no evidence that the salary received by Playle was excessive, or that rent was not a fair and reasonable one. There was no evidence that any of the rent or salary payments were made with the intent to defraud creditors.”).
But there are Iowa decisions that pierce to remedy abusive self-dealing by controlling shareholders. *Boyd v. Boyd & Boyd, Inc.*, where the Iowa Court of Appeals affirmed a piercing verdict in favor of employee creditors of an insolvent corporation, is a good example. The corporation’s sole shareholder had extended a loan to the company as part of its initial capital structure. When operations founndered, the shareholder caused the corporation to transfer all of its remaining inventory to him in repayment of that loan, leaving no assets available to satisfy the corporation’s obligations to employees and other creditors. The court concluded this preferential transfer to the controlling shareholder justified piercing, even without evidence supporting the traditional *Briggs* factors. The court rejected the shareholder’s argument that only fraudulent transfer remedies should apply, reasoning that piercing was an appropriate supplemental remedy for the unpaid creditors.

A bankruptcy case, *In re Foust*, is another example. Two brothers owned and managed a series of interrelated companies that comprised a family farm operation. The brothers not only undercapitalized the companies but also commingled their personal assets with the entities and failed to maintain records, all to the prejudice of creditors. When one of

233. *Id.* at 541.
234. *Id.*
235. *Id.* at 544.
236. The court explained:

   In the case at bar, we do not know if the inventory transferred to Gene remains in his possession or if it has been entirely liquidated by him. Under these circumstances the remedy of an equitable lien may be ineffectual. Furthermore, Gene completely depleted the assets of the corporation and left it an empty shell for purposes of collection by the corporation’s creditors. We conclude that recognizing the separate corporate existence and protecting Gene from personal liability in this case would bring about an inequitable result. This situation fulfills the “exceptional circumstances” requirement of *Briggs* and warrants imposing personal liability upon Gene.


238. *Id.* at *2.
239. See *id.* at *9.
the corporations filed for bankruptcy, the court granted piercing relief under Iowa law on behalf of the creditors.\textsuperscript{240} The court summarized:

John and James Foust treated the separate entities as one joint farming enterprise with substantial and total control over the enterprise exercised by John Foust. John and James Foust treated the corporate entities as single entities depending upon the existing circumstances. They entered into contracts for the benefit of one corporation on behalf of another corporation and received, advanced and allocated funds, assets and liabilities without regard to the actual benefit or burden to the individual corporations. The sole criteria in making these decisions was whether the act benefited James and John personally.\textsuperscript{241}

The piercing remedy was appropriate because the Fousts’ abusive self-dealing transactions violated a basic corporate creditor bargain: creditors’ claims to corporate assets enjoy priority over shareholders’ claims to those assets.

Although this principle was also violated in \textit{Algreen v. Gardner}, a recent Iowa Court of Appeals case, the court reversed both a fraudulent transfer decision and a related piercing ruling.\textsuperscript{242} Gardner was the majority shareholder of a corporation, GCI, that sold all of its assets—a book of insurance business—to a third party for $1.8 million.\textsuperscript{243} Only part of the sale proceeds were noncompete payments to Gardner, but the buyer paid \textit{all} of the proceeds directly to Gardner and his son, a minority shareholder.\textsuperscript{244} As a result, GCI had no assets to pay creditors’ claims.\textsuperscript{245} Plaintiff Algreen had sued for unpaid wages and commissions while the asset sale was in process but did not obtain judgment against GCI until after the sale was consummated and the proceeds distributed to Gardner and his son.\textsuperscript{246} The trial court granted both fraudulent conveyance and piercing relief in Algreen’s favor, but the Iowa Court of Appeals reversed over Judge Richard Doyle’s dissent.\textsuperscript{247}

\begin{itemize}
\item \textsuperscript{240} \textit{Id.} at *10.
\item \textsuperscript{241} \textit{Id.}
\item \textsuperscript{242} \textit{Algreen v. Gardner}, No. 17-0104, 2018 WL 3057438, at *4–*6 (Iowa Ct. App. June 20, 2018).
\item \textsuperscript{243} \textit{Id.} at *1.
\item \textsuperscript{244} \textit{Id.}
\item \textsuperscript{245} \textit{Id.} at *2.
\item \textsuperscript{246} \textit{Id.} at *1–2.
\item \textsuperscript{247} \textit{See id. at} *4–6.
\end{itemize}
The majority reasoned Algreen had not adequately demonstrated the transfer to GCI’s shareholders was made with fraudulent intent.\textsuperscript{248} According to the majority, GCI’s inability to pay Algreen’s claim was simply “a happy consequence of the sale of the business, at least as far as Gardner was concerned.”\textsuperscript{249} However, as Judge Doyle pointed out in dissent—correctly in the Author’s view—the asset sale structure, where payment for GCI’s assets was diverted from the corporation and instead made directly to its shareholders, was a clear violation of numerous “badges of fraud” under Iowa fraudulent conveyance law and amply supported the trial court’s remedy.\textsuperscript{250}

The majority also reversed the trial court’s veil piercing ruling, relying on cases holding that veil piercing is not appropriate simply because a corporation goes out of business without sufficient funds to pay creditor claims.\textsuperscript{251} The latter proposition is clearly correct but provides no support for the majority’s holding. GCI went out of business because it sold all of its assets.\textsuperscript{252} The sale should have left GCI with ample funds (nearly $2 million) to pay creditors, but the shareholders appropriated the sale proceeds without properly documenting a corporate distribution.\textsuperscript{253} Documenting such a distribution would have required GCI to make provisions for paying pending creditor claims before any corporate assets were disbursed to shareholders,\textsuperscript{254} and the same would have been true had GCI properly documented liquidating distributions following a corporate dissolution.\textsuperscript{255}

\textsuperscript{248}. Id. at *4.  
\textsuperscript{249}. Id.  
\textsuperscript{250}. See id. at *7–11 (Doyle, J., concurring in part and dissenting in part). The badges of fraud applicable to the Gardner facts include Iowa Code § 684.4(2)(a) (transfer of assets to an insider), (d) (transferor was sued prior to transfer of assets), (h) (transfer of assets was made without consideration), and (i) (the transferor became insolvent after the transfer). Iowa Code § 684.4(2)(a) (2019); see also id. § 684.5(a) (transfer is also voidable if made in exchange for less than reasonably equivalent value and transferor becomes insolvent as a result of the transfer).  
\textsuperscript{251}. See Algreen, 2018 WL 3057438, at *5–6 (majority opinion).  
\textsuperscript{252}. Id. at *1.  
\textsuperscript{253}. See id. at *8 (Doyle, J., concurring in part and dissenting in part).  
\textsuperscript{254}. See Iowa Code § 490.640 (forbidding distributions to shareholders when corporation is insolvent or would become insolvent as a result of the distribution); see generally Doré, Iowa Practice, supra note 1, §§ 30:5–30:8.  
\textsuperscript{255}. See Iowa Code § 490.1405(1)(c) (stating a dissolved corporation is to discharge or make provisions for discharging its liabilities); id. § 490.1409 (requiring directors of dissolved corporation to pay corporate assets to shareholders after providing for payment of creditor claims).
2. Implications for the Briggs Factors

The Briggs factors of undercapitalization, financial commingling, and failure to observe formalities are probably most relevant to piercing cases in the category described above.256 Even if many voluntary corporate creditors accept the risks associated with limited liability, undercapitalization in the form of insolvency, or near insolvency, dramatically increases fraudulent transfer risks for all creditors.257 Similarly, financial commingling and failures of recordkeeping can severely prejudice creditor efforts to trace and recover corporate assets.258 Moreover, these problems can easily mask abusive self-dealing transactions that enable controlling shareholders to jump the priority queue for corporate assets.259

D. An Illustration of the Importance of Identifying Policy Objectives in Piercing Cases: Iowa’s “Reverse Piercing” Jurisprudence

The importance of identifying policy objectives in piercing cases is also well-illustrated by two distinct varieties of reverse piercing claims that courts sometimes confront. The first category involves piercing by creditors of individual shareholders to reach corporate assets. As explained below, this relief may be appropriate in limited circumstances. A more controversial reverse piercing issue is presented when controlling shareholders request piercing in order to personally assert corporate rights or to have the corporation assert a shareholder’s personal rights, and the Iowa courts have been correctly skeptical of these claims.

1. Reverse Piercing by Creditors to Reach Corporate Assets

A case discussed in Part III.A.1 above, Benson, where the court pierced the corporate veil to reach the assets of a professional corporation formed by a physician and his wife, is a good example of reverse piercing by creditors of an individual shareholder.260 The evidence strongly suggested the corporation’s sole purpose was to hide the physician’s earnings from his judgment creditors—or to keep those earnings at the low levels protected by Iowa exemption laws—while otherwise sharing the financial benefits from his practice with his spouse, who co-owned the corporation.261 The court

257. See Macey & Mitts, supra note 12, at 130.
258. See Gevirtz, supra note 9, at 876.
259. See Macey & Mitts, supra note 12, at 130.
261. See id. at 758.
directed entry of judgment against the corporation for the full amount of the physician’s obligations to his creditors and stated:

[The shareholders] provided us with no credible purpose for the establishment of Richardson, P.C. other than to maintain the Richardson’s lavish lifestyle and shield Gary’s substantial earnings from the satisfaction of his obligations. Richardson, P.C. is truly Gary’s alter ego. It stands in his place with regard to his former employment arrangements and serves no independent purpose other than to provide for the day-to-day comfort of himself and his family. Fraudulent concealment of earnings is not a valid purpose for a corporation.262

Other Iowa courts, as well as federal courts applying piercing principles to Iowa corporations, have afforded similar reverse piercing remedies to creditors of individual shareholders where the facts warranted that result.263

Of course, a creditor of a controlling shareholder can typically reach corporate assets without piercing in two steps: (1) seize the shareholder’s shares through the judgment enforcement process and (2) use the shares to assert voting control over the corporation. But when share ownership is commingled with related owners who maintain a controlling interest in the corporation, a shareholder creditor’s “seize the shares” remedy may be insufficient to the task. Using the policy justifications for piercing outlined in Parts III.A or C above—to enforce shareholder obligations under other legal schemes or as an adjunct remedy for fraudulent transfers—reverse piercing can overcome share-ownership strategies designed to impede or thwart valid creditor claims against shareholders.264

2. Reverse Piercing by Shareholders

Accepting that shareholder creditors sometimes reverse pierce, what about the converse? Can a shareholder reverse pierce to assert individual rights through the corporation or to assert corporate rights personally? Since

262. Id. at 762.
263. See, e.g., McCall Stock Farms, Inc. v. United States, 14 F.3d 1562, 1570 (Fed. Cir. 1993) (applying reverse piercing to offset an Iowa corporate farm’s Agriculture Financial Services Corporation payments to satisfy an individual shareholder’s Small Business Administration loan obligation); Cent. Bank & Tr. Co. v. Wagener, 183 N.W.2d 678 (Iowa 1971) (applying reverse piercing to subject corporate assets to the judgment creditor’s claim against individual shareholder); Cent. Fibre Prods. Co. v. Lorenz, 66 N.W.2d 30, 35 (Iowa 1954) (same).
264. See, e.g., Benson, 537 N.W.2d at 762.
shareholders choose to organize in the corporate form, one may rightly ask whether reverse piercing in their favor provides shareholders an unwarranted second bite at the apple. And to date, the Iowa courts have not been receptive.

In Hawkeye Bank and Trust, National Association v. Baugh, the first Iowa Supreme Court decision on this question, the court rejected a shareholder’s attempt to pierce the veil of a small, closely held corporation he owned with several other persons.\(^\text{265}\) The shareholder asked the court to disregard the entity so he could defend the corporation on a pro se basis in a fraudulent conveyance action—pro se representation being a right available to individuals but not to corporations.\(^\text{266}\) The court refused, stating, “We are aware of the danger of a debtor being able to raise or lower his corporate shield, depending on which position best protects his property. Consequently, a reverse pierce should be permitted in only the most carefully limited circumstances.”\(^\text{267}\) The court was not persuaded that the pro se representation doctrine was “one of the ‘limited circumstances’ calling for departure from the general rule.”\(^\text{268}\)

Without citing the reverse piercing doctrine by name, the court also refused to apply it in Sullivan Graphics, Inc. v. Board of Review, a case involving the tax treatment of an individual’s acquisition of a corporation that owned machinery and equipment.\(^\text{269}\) If the individual had acquired the machinery and equipment directly, he would have qualified for a reduction in valuation for property tax purposes under a statute that applied to those acquisitions.\(^\text{270}\) The individual argued he should receive the tax reduction because buying all of the stock of the corporation that owned the machinery and equipment was the same as buying the machinery and equipment itself.\(^\text{271}\) The court disagreed, holding ownership of the equipment had never changed.\(^\text{272}\) Another example is Crees v. Chiles, where the Iowa Court of Appeals refused to extend worker’s compensation immunity when an

\(^{266}\) Id. at 24.
\(^{267}\) Id. at 25.
\(^{270}\) Id.
\(^{271}\) Id.
\(^{272}\) Id. at 214–15.
injured worker sued a coemployee on a gross negligence theory. The defendant employee—who was also a shareholder, director, and officer of the corporate employer—claimed immunity as the corporate employer’s alter ego. The court rejected the argument, concluding it would inappropriately expand the legislature’s statutory immunity scheme.

To be skeptical of shareholders’ requests to pierce their own corporation’s veil is not to say such a piercing is never warranted. Had the court in Cree’s concluded that Iowa’s worker’s compensation immunity was designed to protect coemployees who were also shareholders or managers of corporate employers, then using piercing to extend immunity might have been appropriate under the reasoning outlined for the “forward” piercing cases described in Part III.A above—piercing to effectuate noncorporate legal schemes. But, as with any piercing claim, the underlying justification for invoking the remedy should drive the assessment of whether the remedy is appropriate.

E. The Policy Prescription

As this Part of the Article demonstrates, if one first identifies the asserted policy justification for piercing in a particular case, i.e., the reason the plaintiff contends shareholders have abused the corporate privilege, it is much easier to assess whether or why factors such as undercapitalization, commingling of assets, or failure to follow formalities warrant application of the piercing remedy. In fact, depending on the policy objective of the piercing remedy, one or more of the traditional piercing factors may be irrelevant—and indeed likely will be irrelevant in the cases described in Parts III.A and D above.

However, this initial piercing policy inquiry is largely missing from Iowa’s Briggs factor analysis. Iowa’s pattern jury instructions for piercing cases repeat the judicial mantra that the overriding question is whether the corporate privilege has been abused, and that abuse may be found “when the corporation is a mere shell, or serves no legitimate business purpose, or is used by the shareholder primarily as a means to commit fraud or promote

274. Id. at 251.
275. Id.; see also Rooker v. Flanagan, No. 11-1291, 2012 WL 1439170, at *3 (Iowa Ct. App. Apr. 25, 2012) (finding corporate shareholder not protected by immunity that applied to his corporation as licensee or permittee under Iowa’s Dram Shop Act).
276. See supra Part III.A.1.
injustice.”277 But these examples do not accurately capture the substantial consensus of courts and scholars that abuse occurs when defendants do one of the following: (1) use the corporate form to evade obligations imposed by other legal schemes; (2) engage in fraud or misrepresentation to obtain corporate credit; or (3) engage in abusive self-dealing transactions that improperly subordinate creditors’ claims to corporate assets.278

A better approach is to require plaintiffs to first identify the policy goal that supports the piercing remedy, preferably as a matter of initial pleading,279 but certainly in response to dispositive pretrial motions and as a guide for the ultimate piercing inquiry. In most cases, a plaintiff’s justification should be one of the three policy objectives outlined above. With that policy objective of piercing in view, the court (or the jury that has been instructed about that policy objective) can better assess whether any traditional Briggs factors logically support granting relief as well as the relative importance of those factors.

As an example, assume the policy justification for a creditor’s piercing claim is that a shareholder used the corporation to evade a noncorporate legal obligation, like a noncompete agreement. The crux of the piercing inquiry should be whether the letter or spirit of the noncompete agreement encompasses the shareholder’s corporate activity, rather than an examination of corporate capitalization, financial separation, or formalities. In contrast, if the basis for the claim is fraud by shareholders in obtaining corporate credit, one might be able to establish express or implicit misrepresentations on that topic by showing the level of capitalization, commingling of corporate and personal finances, and failures to observe formalities or maintain financial records.

An additional benefit of requiring the plaintiff to articulate abuse of the corporate form in terms of one or more policy objectives that logically support piercing is to facilitate appellate review. Only if the plaintiff identifies a policy objective that allegedly establishes abuse can the appellate

277. See supra note 67.
278. See Gevurtz, supra note 9, at 871–74.
279. This Article’s proposal that plaintiffs should plead abuse of the corporate privilege in terms of one of the standard policy justifications that support piercing is not a proposal for heightened pleading requirements that exceed basic notice pleading standards. The proposal simply recognizes that pleading abuse of the corporate privilege alone does not adequately disclose the basis for the plaintiff’s piercing claim and the grounds upon which it rests. See Conley v. Gibson, 355 U.S. 41, 48 (1957), abrogated by Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).
court test the soundness of that objective in light of the state’s established or developing piercing jurisprudence. And, with a valid piercing policy objective in view, the appellate court will be in a better position to assess the logic of any Briggs-factor trial evidence supporting that objective.

IV. THE PROPER ROLE OF JUDGE AND JURY IN IOWA PIERCING CASES

As explained below, Iowa courts have recognized a right to a jury trial on the question of piercing with little discussion. Yet, a slight majority of jurisdictions favor having judges decide piercing cases. Commentators have identified at least seven jurisdictions (District of Columbia, Florida, Georgia, North Carolina, Tennessee, Texas, and Utah) that recognize a right to a jury trial on the issue of piercing, and a dozen that do not (Alaska, Arkansas, California, Delaware, Illinois, Indiana, Kentucky, Nebraska, Nevada, Pennsylvania, South Carolina, and Wyoming). My own research identifies authority on the issue in seven more states, with three leaving the issue to judges (Idaho, Louisiana, and Wisconsin) and four recognizing a jury trial right (Alabama, Maine, Mississippi, and Montana). The issue is unsettled or unclear in many other states.

281. See Halabi, supra note 14, at 1039–42 (summarizing cases); Koosed et al., supra note 14, at 125–28 (summarizing cases).
283. See, e.g., Deupree v. Ruffino, 505 So. 2d 1218, 1222 ( Ala. 1987) (holding alter ego and separate corporate existence is an issue “for the trier of fact”); Blue Star Corp. v. CKF Props., L.L.C., 980 A.2d 1270, 1280 (Me. 2009) (“Whether the corporate form should be disregarded involves questions of fact for a fact-finder to decide.”); Gray v. Edgewater Landing, Inc., 541 So. 2d 1044, 1047 (Miss. 1989) (“To present a jury issue on a demand that the corporate veil be pierced, a party must present some credible evidence on each of several piercing factors.”) (emphasis added)); Drilco, Inc. v. Roll Energy Corp., 749 P.2d 1058, 1066 (Mont. 1988) (“The jury was properly instructed as to the elements of piercing the corporate veil.”); Fetzer Elec., Inc. v. Develco, Inc., 321 N.W.2d 521, 522–23 (N.D. 1982) (holding the jury instruction concerning piercing the corporate veil was the “settled law of th[e] case” because neither party objected to it at trial).
284. Halabi, supra note 14, at 1043–45 (identifying a number of states that take a
The Iowa practice of using juries to resolve piercing claims finds support in *Team Central, Inc. v. Teamco, Inc.*, a case the Iowa Supreme Court decided the same year as *Briggs*. The *Team Central* court addressed briefly whether piercing “is a question of law to be decided by the court, not the jury” and concluded: “We do not believe that this is a correct statement and several of our cases hold otherwise.” Although the cases cited by the *Team Central* court provide no analysis beyond conclusory statements that piercing is a fact question, that premise has never been challenged.

To be sure, Iowa litigants sometimes try piercing cases to trial judges by consent. But whether a judge or jury grants the remedy, if piercing is determined as a question of fact at trial, appellate review can ask only whether substantial evidence supports the determination. This limited review hampers Iowa appellate courts’ ability to shape and refine the piercing doctrine based on evolving policy considerations. For example, in a recent unpublished decision, the Iowa Court of Appeals disagreed with the trial court’s factual conclusions concerning the corporation’s capitalization but nonetheless affirmed its decision to pierce because substantial evidence supported the trial judge’s findings on corporate formalities and separate finances. In contrast, in another recent case where the parties tried the plaintiff’s piercing claims under the trial court’s equity jurisdiction, the Iowa Court of Appeals applied a more searching de novo review standard to both the underlying factual and legal conclusions of the trial court and reversed the decision not to pierce.

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286. *Id.*
288. *Briggs* is an example. *See Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 808 (Iowa 1978) (“Trial was to the court.”). For a more recent example, see Keith Smith Co. v. Bushman, No. 15-0347, 2015 WL 8364910, at *1 (Iowa Ct. App. Dec. 9, 2015) (“[T]he trial court’s fact findings are supported by substantial evidence.”).
289. The general standard of review for a trial court’s or jury’s fact findings in Iowa civil cases is substantial evidence. *See, e.g.*, Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C., 734 N.W.2d 473, 476 (Iowa 2007) (“The trial court’s findings of fact have the effect of a jury verdict and are subject to challenge only if not supported by substantial evidence in the record . . . .”).
In 2015, Justice (then Judge) McDonald called for reconsideration of Iowa’s jury trial practice in piercing cases. In *Minger Construction v. Clark Farms, Ltd.*, Justice McDonald argued in dissent that piercing is an equitable remedy for which jury trials are not required and that the ultimate decision to pierce is a legal question.292 For the reasons outlined below, the Author agrees with Justice McDonald.

A. The Parameters for Assessing the Judge vs. Jury Issue

It is clear the piercing remedy is not statutory because the doctrine overrides statutes recognizing a corporation’s separate legal existence and shareholder limited liability.293 Thus, there is no question of a statutory right to a civil jury trial on such a claim.294 Rather, for piercing cases tried in federal court, the question is whether the remedy implicates the Seventh Amendment’s guarantee that civil litigants are entitled to a jury trial where the amount in controversy exceeds $20.295 And in state court, where most piercing cases are tried, the issue is whether piercing claims trigger parallel state constitutional provisions protecting trial by jury.296 The Iowa constitution, article 1, section 9, enshrines this guarantee: “The right of trial by jury shall remain inviolate . . . .”297 While not identical to the Seventh

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293. See, e.g., *Model Bus. Corp. Act* § 2.03(a) (Am. Bar Ass’n 2016) (“[C]orporate existence begins when the articles of incorporation are filed.”), § 6.22(b) (“A shareholder . . . is not personally liable for any liabilities of the corporation (including liabilities arising from acts of the corporation) . . . .”). Statutes are not always completely silent on the issue of piercing. For example, many limited liability company laws provide that failure to observe formalities is not a permissible ground for piercing. See, e.g., *Unif. Ltd. Liab. Co. Act* § 304(b) (Nat’l Conference of Comm’rs on Unif. State Law 2006).

294. See *Koosed et al., supra* note 14, at 98 (stating a “threshold matter” concerning the right to a jury trial is “whether a statutory right to jury trial is implicated”).

295. U.S. CONST. amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.”).

296. One source indicates that approximately 30 percent of piercing cases are tried in federal court, with the remainder handled in state court systems. Halabi, *supra* note 14, at 1015.

Amendment, the Iowa Supreme Court held in *Weltzin v. Nail* that the provision expresses “the same general preference for jury trials.”

In addition to the commentary and research on state piercing cases summarized above, a recent survey reveals a considerable split of authority on whether the Seventh Amendment requires juries in federal court to decide piercing claims. The First and Second Circuits refer the issue to juries on the theory that monetary damages—the relief most piercing plaintiffs seek—makes piercing a legal claim, whereas the Seventh Circuit lets judges resolve the issue on the theory that piercing is an equitable remedy. The U.S. Supreme Court has never weighed in, but its ruling in *Ross v. Bernhard* that juries must decide derivative suits seeking money damages lends some support to the former view. Decisions in the other circuits, and among lower federal courts, are also split.

Interpreting the Iowa constitution’s jury trial guarantee in *Weltzin*, the Iowa Supreme Court expressly rejected *Ross*’s reasoning that the nature of the remedy—monetary damages—is the primary touchstone for the judge–jury issue for Iowa derivative suits. The court held there is no jury trial right, even on claims for money damages, if the “essential nature of the cause of action” is equitable. Because derivative suits are equity actions, the court concluded, Iowa’s jury trial right does not apply to any claims brought in that capacity. The court supported its decision with practical considerations, including judges’ superior ability to resolve “complicated corporation and duty” issues, and even suggested that allowing juries to resolve these matters might “offend Iowa’s constitutional mandate of due process under article 1, section 9.”

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299. Koosed et al., supra note 14, at 114.
300. See id. at 114–18, 121–24.
302. Koosed et al., supra note 14, at 125. The Eighth Circuit has not explicitly addressed the question, although federal courts in Iowa have used juries to decide piercing cases. See, e.g., HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935–36 (8th Cir. 2007) (applying Iowa law and affirming the jury verdict “piercing the corporate veil”).
303. See Weltzin, 618 N.W.2d at 300.
304. Id. at 297.
305. Id. at 300.
306. Id. at 301–02.
Although not an issue in Weltzin, it is also clear Iowa’s jury trial right does not extend to purely legal questions in any dispute. The issue for piercing cases then is twofold. Is an Iowa piercing claim essentially legal or equitable in nature? If piercing claims are equitable, then courts should determine the issue, including subsidiary fact questions. But, even if piercing claims are legal actions in which juries decide disputed facts, is the ultimate decision to grant or withhold the piercing remedy a mixed question of law and fact or a pure legal question? If the latter, the court should make the decision. The following sections evaluate these two possibilities.

B. Piercing Cases as Equitable Actions

The origins of the veil piercing remedy are not clear, and one federal court has declared that the action has origins in both law and equity. A recent article exploring the issue concludes, “[T]here is no consensus on the question of whether the doctrine’s roots are primarily legal or equitable. The best answer from the case law seems to be a bit of both.” Professor Wormser is said to have dubbed piercing as Our Lady of the Common Law, but that label is probably best understood as Wormser’s paean for the remedy’s flexibility in judicial hands.

Iowa’s piercing jurisprudence reflects a similar ambiguity. The first veil piercing claims in Iowa were decided in the early twentieth century as equitable actions involving real estate claims. The earliest reported instance of piercing by an Iowa jury was a 1942 decision holding a Delaware parent corporation liable for an accident that occurred on the premises of its Iowa subsidiary. Since those early decisions, most piercing claims in Iowa have been submitted to juries, although one can find examples of piercing

307. See, e.g., Am. States Ins. Co. v. Estate of Tollari, 362 N.W.2d 519, 521 (Iowa 1985) (recognizing the interpretation of Iowa statutes is a legal question, and the Iowa Supreme Court is the final arbiter).
310. Id. at 110.
311. See First Tr. Joint Stock Land Bank of Chi. v. Galagan, 261 N.W.2d 920, 921–22 (Iowa 1979) (refusing to pierce corporate veil in an equitable foreclosure action); Keokuk Elec. Ry. & Power Co. v. Weismann, 126 N.W. 60, 64–65 (Iowa 1910) (piercing the corporate veil to identify corporation with its owners in an equitable action to enforce an easement).
claims tried to the court in equitable proceedings to enforce liens and judgments, as well as piercing claims tried to the court by consent.\footnote{313}

While courts may be divided, the overwhelming scholarly consensus is that piercing is an equitable remedy.\footnote{314} One group of commentators who recently studied the issue conclude:

\begin{quote}
[T]he equitable “guts” of the veil-piercing mechanism are reflected in the fact that nearly every state universally requires a showing of “fraud” or “injustice” or “inequity”—all themselves terms of equity and, in fact, equitable claims in the case of fraud—to justify piercing the corporate veil and imposing liability on shareholders. Thus, no matter how much courts may dress up the veil-piercing mechanism in legal clothes, equity has always been, and continues to be, the sine qua non of veil piercing.\footnote{315}
\end{quote}

Another commentator stresses the congruence between piercing and the general character of equitable remedies.\footnote{316} Piercing is not only an extraordinary and inherently flexible remedy, he points out, it also responds to the inadequacy of legal relief and focuses on intent and substance, rather than form.\footnote{317} Yet another scholar makes a compelling argument that piercing is best understood as an expression of equity’s constructive trust remedy.\footnote{318}

This Author concurs in the foregoing assessments and would add that piercing bears a strong similarity to statutory judicial dissolution remedies available to minority shareholders who can demonstrate fraud, illegality, or oppression by controlling owners.\footnote{319} Although legal damage claims for breaches of fiduciary duties offer parallel relief to minority shareholders, statutory dissolution claims based on that same conduct are tried to the court based on the extraordinary nature of the remedy sought.\footnote{320}

\footnote{313. See, e.g., Cent. Fibre Prods. Co. v. Lorenz, 66 N.W.2d 30, 31 (Iowa 1954) (piercing claim in equitable judgment enforcement action); Ross v. Playle, 505 N.W.2d 515, 517–18 (Iowa Ct. App. 1993) (affirming court’s decision not to pierce following a bench trial).
314. See Koosed et al., supra note 14, at 130 n.183 (stating “numerous commentators have suggested that the remedy is ‘equitable in nature’” and collecting authorities).
315. Id. at 130–31.
317. See id. at 68–71.
318. See Oh, Unbound, supra note 13, at 96.
319. See IOWA CODE § 490.732 (2019); see generally DORÉ, IOWA PRACTICE, supra note 1, § 31:11.
320. See, e.g., Baur v. Baur Farms, Inc., 832 N.W.2d 663, 668 (Iowa 2013) (noting...
In short, there is sufficient ambiguity in the case law that the Iowa Supreme Court could recognize piercing as an equitable remedy in future cases without upsetting settled expectations of litigants. Justice McDonald urged such a change in *Minger*321 and also offered practical considerations in support of shifting the decision from the jury to judges.322 The latter includes the difficulty of providing adequate jury instructions on piercing.323

As Justice McDonald explained, “The jury cannot be given meaningful instruction when the case law provides there is no ‘hard and fast rule’ to resolve the issue. . . . [T]he gestalt inquiry makes the question particularly ill-suited for jury determination . . . .”324 The substantive reforms suggested in Part III of this Article—that piercing considerations should vary depending on the policy goals supporting application of the remedy in a particular case—add further support to Justice McDonald’s point about the absence of hard and fast rules.325 Moreover, Iowa would be in good company in recognizing piercing as an equitable remedy, as decisions from the highest courts in other states are trending in the same direction.326

**C. Piercing as a Question of Law for the Court**

Even if piercing claims are legal in nature so that juries must decide disputed fact issues, it does not follow that the ultimate question of piercing is inevitably a mixed question of law and fact for the jury to decide as well. Consider, for example, the piercing claims described in Part III.A of this Article, where the remedy is designed to prevent shareholders from evading legal responsibilities from noncorporate sources. The *Briggs* piercing factors

shareholder oppression action was tried in equity); see also *Knobloch v. Home Warranty, Inc.*, No. C15-4239-MWB, 2016 WL 6662709, at *4 (N.D. Iowa Nov. 10, 2016) (describing the difference between minority shareholder oppression dissolution suits and minority shareholder suits for breach of fiduciary duty by majority shareholders as “[t]omato (to-may-toe)-tomato (to-mah-toe)”).


322.  See *id.* at *7–9.

323.  See *id.* at *7.

324.  *Id.* at *8.

325.  *Supra* Part III.

are rarely implicated in these piercing decisions, since the issue is whether enforcing other laws provide a good reason to pierce. That decision is a legal question for the court, not a fact question for the jury.

And even where piercing claims are brought on corporate creditors' behalf, whether as a remedy for fraud and misrepresentation by controlling owners or to remedy abusive self-dealing transactions and fraudulent transfers, tailoring the piercing remedy entails considerations that are legal in nature. Consider the Briggs case once more. In addition to affirming the trial court's piercing decision, the Iowa Supreme Court also affirmed Briggs' recovery from two of Starr's shareholders (Scott and Robert but not Martha) under the theory that they had "committed fraud individually and in conspiracy."327 While Martha escaped liability for fraud at trial because there was no evidence she personally participated in Scott's and Robert's activities,328 the court reversed the trial court's decision that Martha should also escape personal liability on the piercing claim.329 Critical for purposes of this discussion, the Iowa Supreme Court evaluated these discrete rulings under different appellate review standards.330

The parties had tried the case to the trial court without a jury, apparently by consent.331 The Iowa Supreme Court reviewed and affirmed the fraud rulings under a deferential substantial evidence standard.332 But the court reversed the trial court's decision not to pierce Starr's veil as to Martha, reasoning that while Martha's lack of personal involvement in Starr's activities helped her escape fraud liability, omissions on her part contributed to Starr's having no capital or corporate records.333 As Justice McDonald noted in his Minger opinion, in so ruling, the Briggs court

327. Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The fraud and conspiracy claims were predicated on Scott's and Robert's communications with Northern that misrepresented Starr's creditworthiness and their subsequent misappropriation of the goods Northern sold to Starr. See id. at 808-09.

328. Id. at 811.

329. Id.

330. Id.

331. See id. at 808.

332. Id. at 811 (“In division I [the portion of the court's opinion discussing the defendants' personal liability under a fraud and conspiracy theory] we noted our basic rule that on appeal from a law action tried to the court, its findings are binding upon the appellate court if supported by substantial evidence.”).

333. The court held this abdication of responsibilities as a director and officer justified holding Martha jointly and severally liable with Scott and Robert on the piercing claim. Id. (citations omitted); see also supra note 65 and accompanying text.
carefully distinguished the trial court’s factual findings relating to piercing from its legal conclusions about the application of the remedy. The Briggs court stated:

[The substantial evidence standard of review] does not preclude inquiry into the question whether, conceding the truth of the facts found, a conclusion of law drawn therefrom is correct, nor are we bound by [the] trial court’s determination of the law.

In the case before us we are in accord with district court’s factual findings relating to Martha’s role in the corporation. We simply hold under those facts and the applicable rules of law relating to denial of the separate entity privilege, supra, she also is liable for the indebtedness owed Briggs.

In the decades since Briggs was decided, Iowa courts appear to have lost sight of the fact that all piercing claims implicate lawmaking and policymaking decisions that police abuse of the corporate form. As Part III of this Article explained, the policy objective to be accomplished by piercing will vary from case to case, as will the supporting facts. Having juries decide the facts—such as whether the corporation is undercapitalized or whether corporate formalities have been ignored—should not excuse or deter courts from deciding the legal import of those facts, including whether and how they bear on piercing. Appellate courts, in turn, should be empowered to review those legal conclusions de novo rather than under the constraints of a substantial evidence review standard.

Here’s a final point. Allowing room for judicial lawmaking in piercing cases is entirely consistent with the overarching pattern of U.S. corporate law. Business entities in other countries are typically subject to detailed regulatory constraints. The U.S. approach, in contrast, is to provide flexible statutory frameworks for corporate participants but with judicial oversight as a critical counterweight.

335. Briggs, 262 N.W.2d at 811–12.
V. CONCLUSION

Iowa’s piercing decisions under Briggs and its progeny are consistent with larger U.S. corporate law patterns and thus fraught with many of the same challenges. This Article urges thoughtful reassessment of Iowa’s piercing jurisprudence on both substantive and procedural grounds.

Resolution of piercing claims, whether by courts or juries, will benefit greatly from judicial insistence that plaintiffs clearly articulate the policy goal of the piercing remedy they seek. With that policy goal in view, courts can more easily determine whether and to what extent the evidence compels the remedy.

Since piercing is, in essence, equitable relief, courts should make relevant factual findings and legal conclusions, which will in turn facilitate appellate review under a de novo standard. But even if piercing claims are legal in nature so that juries determine whether underlying facts support the remedy, the ultimate decision of whether to pierce represents a lawmaking and policymaking exercise that should be reserved to courts.