

**PIERCING THE CORPORATE VEIL: A CRITICAL ANALYSIS OF SECTION 20(9) OF THE
COMPANIES ACT 71 OF 2008**

**DISSERTATION SUBMITTED IN FULFILMENT OF THE REQUIREMENTS OF
THE LL.M DEGREE AT THE UNIVERSITY OF VENDA**

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(2017)

NSRF FUNDED

ABSTRACT

Once a company is incorporated it becomes a juristic entity, distinct and separate from its incorporators. Thus, the company bears its own liabilities. However, section 20(9) of the Companies Act 71 of 2008 grants the courts the discretion to disregard the separate legal personality of a company where there is unconscionable abuse of the juristic personality of the company. However, the challenge is that the section fails to define what constitutes "unconscionable abuse". This research thus investigated what constitutes unconscionable abuse of the juristic personality of the company as the ground for piercing the corporate veil. Simply put, this research identified the circumstances under which the corporate veil may be pierced, given the confounding provisions of section 20(9). In unravelling the problems posed by the said section, the researcher employed a combination of doctrinal legal research methodology and comparative research methodology which involve the scrutiny of 'black letter of the law' and the laws of other jurisdictions. The result from this extensive inquiry is that the term 'unconscionable abuse' is a legislative derivative from the various terms used by the courts at common law to justify the disregarding of the separate legal personality of the corporate entity. Therefore, the inescapable conclusion reached is that just as those terms used at common law are confounding, so shall this legislative innovation. Therefore, in order to resolve this problem each matter should be dealt with based on its peculiar facts.

Keywords: Company, director, juristic person, lifting of the veil, piercing the corporate veil, juristic person and unconscionable abuse