

A Critical Analysis of the Concept of Unconscionable Abuse under the South African Company Law

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Abstract : Although a company is a legal entity with separate legal personality, the courts are empowered to review and set aside the personality of a company on the ground of 'an unconscionable abuse'. The process is called piercing of the corporate veil. Of interesting note however, it is controversial as to what the concept of 'unconscionable abuse' entails. The purpose of this study is to explore this concept in an attempt to understand its proper meaning and how it bears on the powers of the company director to take decision on behalf of the company as a juristic entity. Given the confounding provision, an attempt is made to identify the circumstances in which the courts may pierce the corporate veil and also to investigate the extent to which the courts can do so. The results of this study show that the term unconscionable abuse is a legislative innovation to justify the court's interference with the separate legal personality functions of a company.

Keywords : company law, unconscionable abuse, director, companies act

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