A CRITICAL ANALYSIS OF DIRECTORS DUTY UNDER OHADA AND ENGLISH CORPORATE LAW

Written by ***Nchofua Anita Nyitioseh***

3rd Year Ph.D. Research Candidate, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

ABSTRACT

Many has various viewpoints on the theoretical foundations underpinning corporations. These viewpoints have led to the formulation of different theories in terms of which the corporation is defined. Unfortunately, these views have brought so many worries to corporate participants who want to know the relationship with the company, their economic activity and their regulators. Companies are run by directors who are entrusted to manage the company, and has the expertise to makes the day-to-day business decisions. The OHADA as well as the English legislators have given a list of director's duties to protect corporate stakeholders. The comparison between these systems will enlighten investors on the legal system which best protect their interest. Therefore, our main objective in this paper is to examine the director's duties as well as analyse their corporate liabilities under the OHADA and English law respectively without living out some robust proposals for reforms. To achieve the said objective, we employed a content analysis approach in the whole write-up.

***Keywords*:** Corporate Governance, Protection, Director's duties, Company, Law, theories.

INTRODUCTION

Observer has various viewpoints on the theoretical foundations underpinning the corporation. These viewpoints led to the formulation of different theories in terms of which the corporation is defined. For some authors, different theories concerning the origin and purpose of corporations influence the model of company adopted and thus shape the relationship that companies have with all the participants in their economic activity and with their regulators[1] Some of the theories that lays down the foundation of corporation suggest that a company is merely a contractual entity created by the shareholders as the owners of this private entity, some consider a company as an institution created by the state and the shareholders are the providers of capital and are separate and distinct from the company [2] According to Gautam Sundaresh, the debate regarding the nature and the beneficiaries of fiduciary duties owed by company directors finds its origins in 19th century jurisprudence. For him, the debate is both complex and dynamic, with varying considerations being taken into account depending on the jurisdiction and the prevalent economic and commercial context and each jurisdiction derives its color from historical and cultural factors that are indigenous to its corporate governance framework [3].

The concept of separate personality has become the basic principle under both OHADA and English corporate law. Once a company is incorporated under these laws, it assumes the form of a separate legal entity distinct from its members [4]. As an artificial person, companies therefore can only act through human agent who becomes the directing minds and will of the company. [5] In view of increasing emphasis on adherence to norms of good corporate governance, Company Law assumes an added importance in the corporate legislative milieu, as it deals with structure, management, administration and conduct of affairs of Companies. [6]

Director’s duties under UK corporate law were hitherto not codified. Having been based in common law and equity; these principles have always provided the guidance for courts. But the enactment of the 2006 UK Companies Act brought many changes to the UK corporate prospect, the most prominent of which was the codification of director’s duties for the first time. With the objective to improve corporate governance [3]. Director’s duties under OHADA Law however did not go through all the transformation as was the position under English law. The duty of care and skill, loyalty and good faith are encountered both under the OHADA and the English corporate law though sometimes differently articulated and stressed upon [3].

Therefore, our main objective in this paper is to examine the director's duties as well as analyse their corporate liabilities under the OHADA and English law respectively. But before delving into these objectives, it is imperative to first of examine some of the corporate law theories in the section that follows

CORPORATE LAW THEORIES

There are various company law theories to explain the existence of a company. There is however, no universally accepted company law theory which provides the complete explanation as a base from which company law can be deduced [7]. These include the contractual, communitarian and concessionary theories [1].

Contractual Theory of Corporation

Contractarians view the company as nothing more but a number of complex, private consensual contract-based relations, either express, or implied, also referred to as a nexus of contracts [8] and they consist of many different kinds of relations that are worked out by those voluntarily associating in a company [9]. Legal contractarian holds the opinion that corporate governance consists of legally enforceable contracts between various stakeholders [10]. Contractarian theory centres on addressing problems arising from the separation of ownership and control with the firm being seen as a "*nexus* of contracts [9]. But this theory however fails to explain why the creation of a separate legal personality cannot be done by contract alone without the state intervention by giving the legal status to a company [2].

Transaction Cost Theories

The management of each company lays in the hands of the managing board also known as the board of directors and they have as a duty to maximize profit for their shareholders [9]. If all the contracts needed to sustain production were precise and specific as to future requirements - what workers were to do, how managers were to act, the terms of provision of capital and what suppliers were to deliver - there would be no cost benefits to creating a company as compared with negotiating each contract separately. Since it is to reduce production costs that the corporate vehicle is used, there must be a zone of discretion as the business progresses [6]. For some authors, the imposition of additional duties on directors would hamper transaction costs and prevent resources from being used in the most productive and efficient way. Key for

instance states that “the concern is that any greater imposition on directors will make them less efficient in their role as agents of the shareholders of the company, because amongst other things, they will start to think of their own positions, rather than maximizing profits [9]. However, if all the contracts needed to sustain production were precise and specific as to future provision of capital and what suppliers were to deliver, there would be no cost benefits to creating a company as compared with negotiating each contract separately

The Contract with Shareholder

Many contractarians regard the company as nothing more than a number of complex, private contract-based relations, either expressed or implied. This theory is anti-regulatory and participants can opt out of rules should they wish to. The theory also suggests that the shareholders are the principals and the directors or managers the agents [9]. It offers shareholders a pre-eminent position in the corporation, not as a consequence of their being owners but rather due to their being residual risk takers. The contract with shareholders is said to mandate the directors to set objectives, oversee management and return profits to shareholders [6].

Implication for Social Activism

Among corporate stakeholders, only shareholders have the power to influence corporate governance directly [11]. This presupposes that the contract between the shareholders and managers acting on their behalf requires that profit be extracted by any means, as otherwise the executives would not be meeting their obligations to shareholders [6]. Contracts with key parties also contain implicit understandings as well as explicit terms, all of which require respect if the integrity of commerce itself is ultimately to be upheld. The proponents of the 'nexus of contracts' theory at times deploy it to deny that the corporation can partake of any responsibility in society. All the participants on this view are sheltered from moral responsibility by the contracting process itself [6].

Concessionary Theory

The evolution of company law theory, in common law jurisdictions, began with the concession theory which was a dominant approach to explain the existence of a company in the first half of the 19th century [2]. The House of Lords decision in *Solomon v Solomon & Co Ltd* is a typical example of concession theory [12]. The existence of company as legal entity is dependent on law, a company is an artificial creature of the Legislature [2]. The principles are

that a shareholder enjoys the limited liability protection and a company with separate legal entity can be created only by the state [2]. Corporations take their present powerful form because of concessions bestowed on them by the state. This concession theory of the corporation easily explains why corporations should be constructed and regulated in a way that advances the public interest generally [11]. According to Sheehy, the concession theory holds that a corporation's existence and operation is a concession granted by the State to use this corporate tool. The company is therefore seen as a creation of the State [9]. The difference between the communitarian theories and the concession theories is that the latter accept that the state has a limited role to play in ensuring that corporate governance structures are fair and democratic, but do not force the company to realign its aims to reflect the social aspirations of the state [1]. This theory does not indicate precisely who the beneficiaries of directors' fiduciary duties should be. It is, however, acknowledged that the beneficiaries include a wider variety of interests than the contractarian theory, which focuses on shareholders as the main beneficiaries. [9]

Communitarian Theory

The theory regards the company as an instrument of the State. According to this theory, the aims of the company reflect the aims of society [9]. The emphasis is thus on identification of the aims of the company with those of society, causing the loss of a strong commercial identity for the company, because it has become a political tool with diffused goals [1]. This means that the company does not have a strong commercial character, but has become the tool used by the State to give effect to its goals. The risk inherent in this theory lies in the fact that the commercial goal of a company might be lost [9]. The *communitaire* theory looks at the place of the company in the community. According to this theory, stakeholders are vulnerable to abuse and should be protected. Their goal is the long-term viability of the corporation and they rely on the co-operation of all corporate stakeholders to achieve this. Ethical behaviour and fairness are therefore also required. The company will consider the interests of the stakeholders if it will benefit from doing so in the long-term. It is, however, unclear how the *communitaire* theory intends to achieve this goal [9]. This only means that the theories has gained prominence in the "stakeholder debate", in terms of which directors' duties are redefined with reference to the interests of various corporate stakeholders. This approach, also referred to as the "pluralist" approach, asserts that "co-operative and productive relationships will only be optimized where directors are permitted or required to balance shareholders' interests with those of others

committed to the company that is the shareholders employees, creditors, customers, the community just to name a few [1].

The "enlightened shareholder value" approach appears to be more moderate than the "pluralist" approach. This model permits directors to have regard, where appropriate, to the interests of other stakeholders in the company, but with shareholders' interests retaining primacy. The interests of other stakeholders are thus to be considered only insofar as it would promote the interests of shareholders [1].

DIRECTOR'S DUTIES UNDER OHADA AND ENGLISH LAW

It is of particular importance to note that under the UK law as enacted, the courts would more probably need to consider not only an interpretation of a company's articles, but also any resolutions by members at the general meeting, in order to determine at any particular point, whether any act of the directors was in fact ultra vires their powers [25]. The duty of loyalty and good faith under OHADA faces a different issue as compared to the English law. This is based on the fact that it is not easy to separate management from ownership for corporations in Africa. This issue becomes increasingly complicated with the imprecision as to whom directors owe their fiduciary duties to [16].

Unlike courts under English law which has been called to examine situation of breach of directors' duty of good faith and loyalty like the *Re Smith and Fawcett Ltd* [28] case and *Regentcrest Ltd Vs- Cohen,* Courts under OHADA have not been called to examine any situation of breach of the duty of loyalty yet, and, as a consequence, it is difficult to determine how strictly this provision would be applied to directors. Also, unlike English law, OHADA does not contain strong language to protect corporate opportunity against usurpation by directors or managers [28].

It is interesting to note that, a company is an artificial person and is managed by the human beings. The humans who run it are known as Board of Directors [6]. It is the board, who is responsible of the company's overall performance [13]. The active involvement by the board in managerial issues has to some extent to be traded off against the independence required to monitor the executive. In the first instance, somebody must give instructions as to the activities of the company and its manner of working. Where there is no 'owner-management' to decide

business priorities, it must be for the board to set business targets and plan for the long term. Management is then focused on meeting those targets and keeping company operations running smoothly [6].

Director's duties of care and skill under OHADA and English law

The duty of care and skill is a concept familiar to all legal systems and it addresses one of the main aspects of the agency problem between the shareholders and the company [14]. This arises from control or discretion that the fiduciary exercises over the principal's affairs [15]. This duty aims at ensuring that directors devote sufficient time, care, and diligence to managing the company, act only on an informed basis, possess the necessary skills and experience to make sound business decisions, and consider the likely outcome of their decisions carefully.

Both under OHADA and English law, directors are given the widest power and are required to exercise due care, skill and diligent in carrying out their business. Nevertheless, the construction and understanding of due care are unique to each of these business environment [16]. They can differ with regard to the precise behavioural expectations that the duty of care imposes on directors, for example the definition of 'due care', the responsiveness of the duty to different types of director and so on [14].

Corporate managers Under OHADA are considered as good fathers. They are considered as such because the success of the company lies in their hands and also because they are given a high level of trust in the management of the corporation. The high level of trust given to directors under OHADA as well as English law is justified by the fact that they are presumed to manage the entity for the benefit of a larger group [16]. This is corroborated by Article 328 paragraph (1) that:

In dealings between members and absent any provisions of the articles of association setting his powers, the manager shall perform all managerial duties in the interest of the company. [17]

This fact is also supported by Laby, Arthur R to who said, the duty of care is a positive duty in the sense that, control gives the fiduciary the means to take steps to act for the principal's benefit and is necessary to engage in the very conduct that the parties agreed the fiduciary will perform. In fact, one may think of the duty of care in the first instance as a duty to maintain control. When company directors, for example, support the transfer of corporate control, they

are held to a heightened level of care. And recently, the surrender of control by board members to one individual has been blamed in part for failures in corporate governance. [15]

Under OHADA law, the duty of care is shifted and imposed on the auditor when it comes to finances of the corporation. The auditor is technically not a director, however, OHADA requires at least one auditor in every public company. The auditor has strict responsibilities and is held to a high standard of care for the corporation. As a result, it seems like OHADA has shifted the duty of care from regular directors to the auditor who is ultimately responsible of the financial health of the corporation and can be held personally liable thereof. OHADA charges the auditor with the role of a "watch-dog," and is permanently on the lookout for the general and financial health of the corporation [16] This position however is different under English law this is so, because auditors under English law only have duties when it comes to finances of the corporation. This can be seen in section 498 (a) of the 2006 CA which started that:

A company's auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to whether adequate accounting records have been kept by the company and returns adequate for their audit have been received from branches not visited by him [18].

In England directors are subject to a common law duty of skill and care [9]. The duty of care addresses one of the main aspects of the agency problem between the shareholders and the company. It aims at ensuring that directors devote sufficient time, care, and diligence to managing the company, act only on an informed basis, possess the necessary skills and experience to make sound business decisions, and consider the likely outcome of their decisions carefully [14]. This duty implies that managers are expected to make decisions that ordinary, prudent individual in similar position would make under similar circumstances for the benefit of the shareholders [19]. These duties have traditionally been formulated by English common law, which are rules and doctrines initially developed by judges of the English royal courts [9].

Section 174 of the 2006 Companies Act deals with the duties of care, skill and diligence. The standard of care and skill that a director had to apply when managing a company was traditionally quite low. This was the position in *Re City Equitable Fire Insurance Co*. [9] which decision was considered the authority on the point for a long time at common law. The decision

in this case was substantially agrees with a much earlier position held by Bacon VC in *Re Montrotier Asphalte Co (Perry's case) [20].*

The modern view is a stricter and more focused approach, based not only on subjective standards, but also on objective ones. The government specifically stated that the new law is modelled on section 214 of the Insolvency Act of 1986. When directors exercise their duty to promote the success of the company in terms of section 172, they must bear their duties of care and skill in mind. In other words, this duty of care and skill will be relevant when directors act in terms of section 172 [9]. This was the position of the court in *Smith v Van Gorkom [21]*

Just like the position held under the English law system, the duty of care, as established under OHADA, requires directors to follow precise formalities, requires an independent and responsible auditor within each public corporation, and contains no explicit enunciation of the business judgment rule. [21] Contrary to the English law which stressed upon the duty of care at all stages, the duty of care required under OHADA is very stressed upon at the incorporation and during a potential death of the corporation [21]. Directors have to be very careful at these phases because the duty here requires them to act in the best interest of the company and if they act contrary to the interests of the company however, they will be liable for civil or criminal offences [17]. In this line, the UA provides in its article 891 that:

"Shall face a criminal charge, the manager of a private limited company, the directors, the chief executive officer, the general manager, the deputy general manager, the president of a simplified public limited company, the general director or the deputy general director who, in bad faith, have used company assets or credit, knowing that it was contrary to its interests, for personal material or moral purposes or for the benefit of another legal entity in which they have direct or indirect stake." [26]

Though the Statute specifies that directors should allocate all of their expertise to the management of the corporation, the standard of review of due care of directors according to Zachée Pouga Tinhaga remains that of a "homo juridicus" an average informed and reasonable person. In the event of liquidation, just like the situation under English law, directors are required to exercise due care, to assure the regularity of the process, and to aptly represent all stakeholders in the liquidating corporation. Similar to English law, OHADA emphasizes on the process followed by directors. The question is usually whether the directors acted in a way in which an ordinary reasonable person in a like position would act. The care under English law

is judged according to general business standards, while care under OHADA is assessed on the basis that the directors are dealing with the common good that is in the best interest of the company]16]. This point is justified in section 435 of the UA which states that.,

"The board of directors shall define the guidelines of the company's activities and ensure their implementation. Subject to the powers expressly granted to the shareholders' meetings and within the limits of the company purpose, address any matters pertaining to the smooth running of the company, and shall solve, through deliberations, any matter thereof [22].

The duty of care and skill both under and English law implies that managers are expected to make decisions that ordinary, prudent individual in similar position would make under similar circumstances for the benefit of the shareholders.

Duty of Loyalty and Good Faith under OHADA and English Law

One of the core tenets of the law on fiduciary duties is the obligation to avoid conflicts of interest. This is a core principle of equity [9]. Loyalty implies that manager should promote the interest of shareholders but also that they should not put themselves in a position where their interest might conflict with those of the shareholders. For instance, where a director stands to benefit from a corporate contract [19]. Duty of loyalty and good faith are both applied under OHADA and English law even though they are articulated applied differently.

Duty to Act within Powers

The first of the duties recognized by the 2006 Act is that which requires the director to act within powers [23]. it is stated under section 171 of this Act that a director of a company must act in accordance with the company's constitution, and only exercise powers for the purposes for which they are conferred [24]. The common law does however provide various duties and all of them seem to be aimed toward the benefit of the company and its shareholders rather than stakeholders. The duty to 'act within powers' is an example set out in the *Re Smith and Fawcett Ltd* case where it was held that directors were required to act "*bona fide* in that they consider, not what a court may consider is in the interests of the company, and not for any collateral purpose.

The duty of directors to act within their power under OHADA faces a different issue as compared to the English law. This is based on the fact that it is not easy to separate management from ownership for corporations in Africa. This issue becomes increasingly complicated with

the imprecision as to whom directors owe their fiduciary duties to [16] The unanswered question under OHADA remains whether directors owe their duties solely to the corporation, to shareholders directly, to the society as a whole, or to all of them at the same time [16]. Because OHADA tends to give a larger social role to directors, acts that may seem to be out of their power may be justified by the directors. This situation will be a lot different if the OHADA Legislators adopt some of the English law provisions on this part.

The Duty to Promote the Success of the Company

This duty is considered the foremost fiduciary duty of directors [25]. The breadth of this duty is potentially enormous and, significantly, is not focused exclusively on the profitability of the company alone, but rather takes a much more three-dimensional approach to the company's place in the community and in its interactions with third parties other than the shareholders [9]. Thus, the directors must utilize their powers for the ultimate success of the company, which should result in benefit for its members [25]. Just like the English law, OHADA explicitly requires directors to promote the success of the company. This is justified by Section 891 of AUSCGIE which provides that:

"Any manager of a private limited company, directors, chairman and managing director, general manager, managing director or assistant managing director who, in bad faith, use the assets or credit of the company in a way they know is against the interests of the company, for personal, material or moral ends, or in favor of another corporate body in which they have an interest directly or indirectly, shall incur a punitive sanction." [26].

On reading this article, it can clearly be inferred that directors have duties towards the company and they must use the property or credit only in the interest of the company.

The Duty to Exercise Independent Judgment

Owing to the epidemic of massive corporate failures around the world, the phenomenon of having one or more independent non-executive directors on the boards of companies has gradually materialized in every standard code of corporate ethics. The UK Corporate Governance Code 2012 in particular requires at least half the board of listed companies to constitute independent non-executive directors [25]. The objective of this Code was to ensure that, directors make business decisions with some detachment and for the sole purpose of the business. Such Code is not found under OHADA Law.

From the above analysis, we can say that English law has developed a strong mechanism to protect commercial companies [27].

DIRECTORS LIABILITIES UNDER OHADA AND ENGLISH LAW

Liability is a responsibility for the consequences of one's act, where company liabilities determine the legal responsibility of the company for problems, which are committed by the employees of the company. If the actions, which are done for the benefit of the company, but that action affects company laws, then the company should be punished in that case. So, the whole management of the company is liable for the punishment. Conversely, the criminal liability is the liability of the company in any criminal cases. As far as liability is concern, the management can be liable either to the third parties or to the company itself [28]. The term third parties as used here is not limited to persons outside the company such as creditors and passer-by, but it also encompasses shareholders who have claims different from that of the company. Directors would also be liable for damages caused by their faults where it is proved that such damages resulted from their faults in the following cases: a violation of the Uniform Act or the Articles of Association even liabilities here shall be incurred against third parties, against the company and when the company is in difficulties respectively [28].

In addition, company management owes their fiduciary duties to the company and only to the company and not to individual members that make up the company. The management may be liable for wrongs which they have committed against individuals who may either be shareholders or not and who suffered damages other than those suffered by the company [28].

According to Article 891 of the OHADAUACC which provides that:

Any manager of the private limited company, directors, chairman and managing director general manager, man director or assistance managing director who in good faith Used the assert or credit of the company in a way they against The interest of the company, for personal, moral ends, Or in favour of another corporate body in which they have an Interest directly or indirectly, shall incur a punitive sanction

Another instant where the corporate veil is lifted is when the managers of a company act for personal interest rather than acting in the interest of the company. This action also exposes the members or managers to personal liability.

Article 890 UACC on its part holds that: *Any company executives who, knowingly, even without and Sharing of dividends public or private to shareholders Partners, with a view of hiding the true situation of the company Summary financial statements not showing, for each fiscal year, an accurate picture of the transaction of the year, of the financial Situation and the situation of the estate of the company at the Expired of the said period, shall incur a punitive sanction.*

CONCLUSION AND THE WAY FORWARD

The corporate entity is a contractual entity and corporate law reform cannot succeed if it violates the essentially private nature of the contractual relations at the corporate entity's core as Michael E. Debow and Dwight R. Lee put it [29]. This does not however mean that communitarian theories should be discarded. Both the communitarian and contractual theories are vital and have been influential in shaping models of company law. Thus, there is a need to balance these terms. With regards to directors' duties, Company law ought to be clear on such important matters the duties must be clarified and simplified for corporate stakeholders and also reviewed from time to time, in tune with developments from case law and practice. Because of all these difficulties we arrive at the following recommendations.

To begin with, there is no universally accepted company law theory which provides the complete explanation as a base from which company law can be deduced this has led to many corporate law theories which to some extend are confusing to corporate participants. Also, the two corporate law theories which have been influential in shaping models of companies like the contractual and the communitarians theories are conflicting. We therefore recommend that a balance should be strike between these two conflicting models. This can be done by adopting a theory which takes in to consideration the interest of both shareholders and non-shareholders groups.

Secondly, Unlike the English law which has series of decided cases with respect to director's duties; OHADA law has little or no body of case law in respect of director's duties to support its fact. In this line, recommend that OHADA member states should copy this example form English law by opening the doors of their courts to entertain matter pertaining to director's duties.

Also, there exist no jurisprudence related to fiduciary duties under OHADA law as a result, courts have not yet been called on to decide on matters relating to the duty of care required, and there is no evidence of application of the business judgment rule as of yet. We therefore recommend that OHADA legislator should incorporate the UK business judgment rule, and it should be applied in its member states. This would reinforce and prove the high level of trust given to directors under OHADA law and thus would give more freedom of action to directors.

REFERENCES

1. **Sulette**, L., (2007), "*Directors' Duties To Creditors"*, A thesis Submitted In Partial Fulfillment Of The Requirements For The PhD Degree, University Of Pretoria.
2. **Hang, S.W.,** (2016), *Corporate Governance And The Protection Of Minority Shareholders In Hong Kong And China:A Comparative Perspective* a thesis for the degree of Doctor of Philosophy in Legal Practice, University of Exeter.
3. **Gautam, S.**, (2019), "In Whose Interests Should A Company Be Run? Fiduciary Duties Of Directors During Corporate Failure In India: Looking To The West For Answers",Mich. Bus. & Entrepreneurial L. Rev. Vol.8, PP.292-350.
4. **Tabe, T.S.**, (2008), corporate personality at common law and under OHADA Uniform Act relating to commercial companies and economic interest groups: a comparative study, annals de la FSJP Universite de Dschang, Tom 12 Maryland Printers.
5. **Phungeh, A.N.**, (2011), "*Company Management: A Comparative Study of the Situation under OHADA and English Law*", Master's desertation, University of Dschang, FSJP.
6. **Janice, L.D.,** (2000), Directing Public Companies - Company Law and the Stakeholder Society, PhD thesis Brunel University.
7. **Million, D.**, (1993), "New Direction in Corporate Law: Communitarians, Contractarians, and the Crisis in Corporate Law", *Washington and Lee LR,* Vol, 50, issue 4, PP. 1373-1374.
8. **Jensen, & Meckling**, (1976), "Managerial Behavior, Agency Costs and Ownership" *Journal of Financial Economics,* Vol.3, PP.323-329.
9. **Clay, O.,** (2015), Directors *Duties: Balancing Shareholder and Stakeholder Interests Under the Companies Act of Kenya Cap 486*, LLB degree
10. **Baker, K., and Anderson, R.**, (2010) , *Corporate Governance: A Synthesis of Theory, Research, and Practice,* John Wiley and Sons.

1. **David, G.Y.**, (2009), The Consumer Interest in Corporate Law, *University of California, Davis* ,Vol. 43, PP.253-315.

11. *Solomon v Solomon & Co Ltd* (1897) AC 22.

12. The Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi, (2014), found at, www.icsi.edu, retrieved on the 04/12/2019, P.369.

13. **Carsten, G.B. et al.**, (2013), A study to directors' duty, LSE Enterprise prepare for the European commission DG Markt.

2. **Laby, A.R.,** (2004), "Resolving Conflicts of Duty in Fiduciary Relationships," *American University Law Review,* Vol.54, issue.1, PP.75-149.

14. **Zachée, P.T.**, Fiduciary Duties of Corporate Directors: a Comparative Study of the US Corporate Law and the Organization for Harmonization of Business Law in Africa (OHADA), found at https//www.law.umich,edu ,

15. **Oumar, N.**, (2017), "Legal framework of Directors' Duties in OHADA Law", *International Journal of Business, Economics and Management Works,* Vol.4 issue11. PP.24-30.

16. See section 498 of the 2006 Companies Act

17. **N Caraige, S., David, R.**, (2013), Shareholder Primacy, Corporate Responsibility And The Role Of Business School, Working Paper.

18. VC in *Re Montrotier Asphalte Co (Perry's case)*

19. *Smith v Van Gorkom* [1942] Ch. 304, 306. *See also Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345 (Del. 1993) and *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).

20. See article 435 of the Uniform Act on Commercial Companies and Economic Interest Groups

21. See section 551 of the 2006 UK Company Act,

22. See section 171 (a), (b). ibid.

23. **Hannatu, A.**, (2015), *"Comparative Analysis of Directors' Duties of Care And Skill And Fiduciary Duties of Loyalty And Good Faith Under The Companies' Acts of Nigeria And The United Kingdome*", A thesis Submitted In Partial Fulfillment Of The Requirements For The Award of The Degree of Master of Laws, Ahmadu Bello University.

24. Article 891 AUSCGIEGs

25. Article 421s Ibid.

26. *Re City Equitable Fire Insurance Co [1925] 1 Ch. 407 (CA) at* 428–429 .

27. **Mitchell, R., Agle, B. & Wood, D**., (1997), "Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts". *Academy of Management Review*, Vol.22, PP.853-886.

28. **Ayuk, M.N., Epie, C.E., (2019),** Criminal Liability of Corporate Management under OHADA and English Law: A Legal Perspective. *Journal of Corporate Governance & International Business Law,* 2(2): p. 28.