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JOÃO INOCÊNCIO JUNIOR

THE LEGAL ENTITY: The influence of the accounting expert reports in the judicial decisions on disregard doctrine according to the Communicative Action Theory

Recife
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Master thesis presented to the Graduate Programme in Accounting Sciences from the Federal University of Pernambuco – UFPE, as a partial requirement to obtain the title of Master in Accounting Sciences.

Research area: Accounting information for external users.

Advisor: Prof. Dra. Márcia Ferreira Neves Tavares

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LA ENTIDAD JURÍDICA: La influencia de los peritajes contables en las decisiones judiciales sobre la doctrina del desprecio del velo corporativo según la Teoría de la Acción Comunicativa

Resumen

La disertación tuvo como objetivo analizar el principio contable de las personas jurídicas sobre la regla de decisión judicial en casos de derecho civil que utiliza la información contable como prueba en las decisiones judiciales (RQ1) sobre la desconsideración de la personalidad jurídica (doctrina de la desconsideración) utilizando la Teoría de la Acción Comunicativa por Habermas con énfasis en cómo los jueces son influenciados por los informes de los expertos (RQ2). A través de los Análisis de Contenido con el uso de estadísticas no paramétricas para medir la efectividad de la comunicación, recolectamos datos de casos reales, catalogados, clasificados para comprobar 4 hipótesis. En mis resultados la primera hipótesis (H1) que mide la sola presencia de características en el Informe podría influir en la ocurrencia de desconocimiento con toda la muestra se encuentra que a pesar de respetar la normativa contable, los informes no mejoraron el proceso comunicativo. La segunda hipótesis (H2) que analiza si el valor en litigio influye en el juez para considerar el contenido de los Dictámenes Periciales sobre su Sentencia. Se confirma dicha hipótesis, también es válida mencionar que pocos jueces consideran el informe en sus sentencias. La tercera hipótesis (H3) trata el tema del enfoque del lenguaje utilizado (normativo versus positivista) que confirma que los expertos utilizan el tecnicismo (lenguaje positivista). El H4 (que hace una correlación entre el informe bien informado y la influencia) se confirma y cuando los informes muestran características más no obligatorias indica cuando los contadores son más comunicativos de su papel en los procesos judiciales tienen sus informes más considerados en su papel como Expertos. Esta investigación encontró algunas limitaciones: secreto de ley de los libros de contabilidad y juicios con sigilo legal. Otras limitaciones fueron la falta de inclusión del desprecio inverso por falta de tiempo; Para futuras investigaciones considerando que los investigadores críticos tienden a buscar respuestas en la neurociencia y a través de la valoración crítica del habla para comprender a los actores de los procesos comunicativos entonces, se recomienda (en una tesis doctoral) para un uso más útil de los datos recolectados que el Los peritajes judiciales designados (laudos periciais) y con la Sentencia Judicial pueden ser analizados con los criterios de la Teoría Crítica en un análisis de contenido. Con el objetivo de conocer el significado de la realidad y la praxis. También se recomienda el uso de entrevistas y encuestas: a jueces y a profesionales contables con el fin de conocer sus capacidades y perspectivas profesionales con el fin de mejorar este estudio sobre el proceso comunicativo. Otra perspectiva puede utilizar la Teoría de la Decisión de Foucault con énfasis en las relaciones de poder.

Palabras clave: Acción Comunicativa; Contabilidad Forense; Derecho Empresarial.

THE LEGAL ENTITY: The influence of the accounting expert reports in the judicial decisions on disregard doctrine according to the Communicative Action Theory

Abstract

The dissertation aimed to analyze the accounting principle of legal entities on the rule of judicial decision in civil law cases that uses accounting information as evidence in judicial decisions (RQ_1) about the disregard of legal personality (doctrine of disregard) using the Theory of Communicative Action by Habermas with an emphasis on how judges are influenced by expert reports (RQ_2). Trough Content Analyses with the use of non-parametrical statistics to measure the effectiveness of the communication, we collected data from real cases, cataloged, classified in order to check 4 hypotheses. In my results the first hypothesis (H_1) which measures the sole presence of characteristics in the Report could influence the occurrence of disregard with all the sample it's found that despite respecting the accounting regulation, the reports did not improve the communicative process. The second hypothesis (H_2) that analyzes whether the value on litigation influences the judge to consider the content of the Expert Evidence Reports on his Decision. That hypothesis is confirmed is also valid to mention that few judges consider the report in their judgments. The third hypothesis (H_3) deals with the matter of approach of the language used (normative versus positivist) that Hypothesis confirms that the experts use technicism (positivist language). The H_4 (which makes a correlation between the well informed report and the influence) is confirmed and when the reports shows more non-mandatory characteristics indicates when the accountants are more communicative their role in the judicial lawsuits they have their reports more considered in their role as Experts. This research found some limitations: law secrecy of accounting books and lawsuits with legal sigil. Another limitations were the lack inclusion of reverse disregard due to the lack of time; For further research considering that the critical researchers tend to seeks answers in neuroscience and through the critical assessment of speech to understand the actors in the communicative processes then, is recommended (in a doctoral thesis) for a more useful use of the collected data that the appointed judicial expert reports (laudos periciais) and with the Judicial Decision can be analyzed with the criteria of Critical Theory in a analysis of content. With the aim of knowing the meaning of reality and praxis. It is also recommended the use of interviews and surveys: with judges and with accounting professionals in order to know their professional abilities and perspectives in order to improve this study on the communicative process. Another perspective may use the Foucauldian Decision Theory with emphasis on the power relations.

Key-words: communicative action; forensic accounting; business law.

A PESSOA JURÍDICA: A influência dos laudos periciais contábeis nas decisões judiciais sobre a doutrina da desconsideração segundo a Teoria da Ação Comunicativa

Resumo

A dissertação teve como objetivo analisar o princípio contábil da pessoa jurídica sobre a regra da decisão judicial em casos de direito civil que utiliza a informação contábil como meio de prova em decisões judiciais (RQ1) sobre a desconsideração da personalidade jurídica (doutrina da desconsideração) utilizando a Teoria da Ação Comunicativa. por Habermas com ênfase em como os juízes são influenciados pelos laudos periciais (RQ2). Através das Análises de Conteúdo com o uso de estatísticas não paramétricas para medir a eficácia da comunicação, coletamos dados de casos reais, catalogados, classificados para verificar 4 hipóteses. Em meus resultados a primeira hipótese (H1) que mede a presença única de características no Laudo poderia influenciar na ocorrência de desconsideração da personalidade jurídica com toda a amostra constata-se que apesar de respeitar a regulamentação contábil, os laudos não melhoraram o processo comunicativo. A segunda hipótese (H2) que analisa se o valor do litígio influencia o juiz a considerar o conteúdo dos laudos periciais em sua decisão. Confirmada essa hipótese, vale também mencionar que poucos juízes consideram o relatório do laudo em seus julgamentos. A terceira hipótese (H3) trata da questão da abordagem da linguagem utilizada (normativa versus positivista) que a Hipótese confirma que os especialistas utilizam o tecnicismo (linguagem positivista). A H4 (que faz uma correlação entre o laudo bem informado e a influência) é confirmada e quando os laudos apresentam mais características não obrigatórias indica que quando os contadores são mais comunicativos seu papel nas ações judiciais eles têm seus laudos mais considerados em seu papel como Peritos. Esta pesquisa encontrou algumas limitações: sigilo legal dos livros contábeis e ações judiciais com sigilo legal. Outra limitação foi a não inclusão da desconsideração reversa por falta de tempo; Para pesquisas futuras considerando que os pesquisadores críticos tendem a buscar respostas na neurociência e através da avaliação crítica da fala para compreender os atores nos processos comunicativos então, recomenda-se (em uma tese de doutorado) para um uso mais útil dos dados coletados que o laudos periciais judiciais nomeados (laudos periciais) e com a Decisão Judicial podem ser analisados com os critérios da Teoria Crítica em uma análise de conteúdo. Com o objetivo de conhecer o significado da realidade e da práxis. Recomenda-se também o uso de entrevistas e formulários: com juízes e com profissionais contábeis para conhecer suas habilidades e perspectivas profissionais a fim de aprimorar este estudo sobre o processo comunicativo. Outra perspectiva pode utilizar a Teoria da Decisão Foucaultiana com ênfase nas relações de poder.

Palavras-chave: ação comunicativa; perícia contábil; direito empresarial.

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INTRODUCTION AND BACKGROUND

This dissertation has the pragmatic mission of making an analysis of the accounting principle of the legal entity on the rule of judicial decision in civil law cases that uses accounting information as an evidence in judicial decisions on the piercing of the corporate veil (disregard doctrine). I will study the communicative efficiency of the expert papers in the judicial decisions using the Haberma's Communicative Action Theory applied in the accounting field research with the emphasis on how the judges are influenced by the expert reports.

There is a Brazilian public interest in a new paradigm about the role of the specialists when they work in their areas of expertise for the benefit of a more accurate judicial decision, in agreement with Nobre Júnior (2016) the classic Brazilian doctrine goes against the right way, believing that there is a supremacy of state interest over private individual interest when the international understating goes in the other direction: the new rule of specialists in the legal field.

Just as Brazil has a long history of authoritarianism and despite the modern interpretation of public interest being linked to the will of the law, it is praxis customary for Brazilian Authorities and Judicial Courts to ignore the accounting field and its legal principles as if there was no sense of justice realizing the enforcement of the corporate veil (entity principle), as if there always a presumption of fraud to creditors, consumers, environmental causes, etc. whenever the corporate lawyers ask for counter measures to avoid the judicial pierce of the corporate veil (HUPSEL, 2006; MAMEDE; MAMEDE, 2015a).

As reported by Phebo (2014) the brazilian legal system came from Roman-Law of european roots, not from English common law. That is why for a long time Brazil was bound to some institutions which even the Europeans countries have had already overcame (bond on certain issues) to an old European law. Some colonial laws (Portuguese ordinances) were in force until 2002 and for some activities such as Law are excluded from the possibility of limited liability, some activities are no protected by the "corporate veil" at all, a protection, without it, the shareholder will answer for the risks with all his personal assets.

The civil law context, says Mamede (2008) comes from French and Portuguese influences that had the so-called 'simple societies', which are used by liberal professionals such as lawyers, doctors, realtors, etc. in other matters listed by law, there were the so-called 'act of commerce', where just in few cases enterprise would be considered a company in the capitalist sense, whereas simple societies would be a distant reflection of medieval guilds, or orders, which rooted in Roman Catholicism traditions. That types of society don't have any limitation of

liability and whenever that form of society bankrupts the managers and shareholders will face their private properties expropriated in favor of creditors.

One aspect of the entity in the Brazilian context is that, historically, it has not been synonymous with a distinction in the responsibility of partners and shareholders towards third parties. The clash of capitalism only came late and the legal institutions are, by nature, conservative to the point that just 2020 a new legislation passed to declare that limited liability is an essential part of economic freedom (BRASIL, 2019a, 2019c).

Anonymous Societies were historically created to protect investors (venture investors), in accordance with Hendriksen & Van Breda (1999) where a group of people ventured into risky ventures seeking substantial returns during the great navigations historical time. Then the Limited Liability (and the Legal Entity) is a fundamental incentive of capitalism. The Brazilian capitalist first impact came through the Brazilian Corporate Law in the middle of the 20th century, when the economy took a turn towards financial capitalism. Until the publication of this dissertation, simple societies still exist (MAMEDE; MAMEDE, 2015a).

Due to the influence of the capital market (Lei das S/A) Brazil found itself in a new scenario, now a realtor, and also a physician could also be seen as a businessman, and not as a "civil company" (a phenomena that only finds support in Brazil) which was unthinkable by the old imperial code of aspirations of the 19th century, in which only a restrict list of activities were considered an enterprise and all the activities outside the list were considered civil societies with barely no protection of the personal assets of its investors.

All of that historical background mentioned explains the Brazilian curious context, where having a legal abide entity in the Brazilian reality does not mean protection of the personal assets of the partners, as in this type of society the responsibility of the entrepreneurs is total and unlimited, as there is no equity to pay any liabilities, the assets of the partners might be expropriated in a simples case of default of a debt to solve creditors.

The accounting has its own rules, rules whose respect are a matter of public interest in line with Lagioia (2011) but it does not mean that Brazilian judges recognize that accounting has information that deals of interest of whole society and that it has the force of law in its field. The history of the judiciary tells that the accounting postulates have not been respected for a long time, which leads to a crisis of legal uncertainty which was severely criticized by the foreign authorities in international critical reports such as Heritage Foundation and Doing Business Report (BRASIL, 2020; WORLD BANK, 2021).

This all leads to pure legal uncertainty, with Brazil being among the largest emerging economies that are badly evaluated on the ranking of the rating agencies. The market and the world punishes states that do not respect accounting science and that respect for accounting

principles is an issue of Public interest, however, Brazil, which comes from an authoritarian patterns have being hostile to entrepreneurs (TIMM, 2018). This is attested by the pronouncements of a significant portion of the area of law and the institutional reports of the judiciary tries to professionalize the judges who deal with causes in the corporate area, who have to deal with cases of fraud and disregard for the legal personality which the present work seeks to study.

In consonance with the National Committee of Justice (Conselho Nacional de Justiça, or CNJ) research about the advantages of specialized courts in Brazil the CNJ discovered some interesting statistical data about the initiative that comes with the idea of the rule of technicians. If the 21st century is the century of technicians, this research is pertinent because it has a sociological approach to a phenomenon that encompasses the legal and accounting area, by studying the impact of accounting reports (accounting reports) produced by experts appointed by Brazilian judges in cases which deal directly with the entity principle, which are the cases when the judges will decide whether the corporate veil will be disregard or not according to the disregard doctrine. Is the 21st century the century of technocracy? Hard to know, but according to Habermas' theory, communication tends to give legitimacy to the market and to the scientific community because it generates transparency, it generates fair play, but it is a fact that this has never been efficiently accepted by Brazil.

The legislation that has been adopted has made the judiciary have the role of technicians (experts), expert assistants (professionals hired by the parties to give opinions in their respective areas of expertise). In similar situations, other legal systems are also present for this type of professional with already established performance (FITZHUGH, 2019). The practitioners who work with the production of evidence to help judges in the judgment are not studied by academics. this study aims to fill this gap and an expert is needed to be impartial and free of bias (KOEHNEN, 2019)

The context of this study takes place at a time when society, for being complete, falls for ignoring respect for this principle, when this principle is under the eyes of the judiciary, it is no different.

Conforming to Coelho (2011) the society expects that the court decision to ignore this principle will be based on evidence. As the years go by, accounting gains space among legal professionals, especially in business law professionals. The business phenomenon for the civil law tradition began to be understood as an activity and not with the formalist bias (of the old commercial code) since 2002, with the new Civil Code, which supplanted the old ordinances contained in the Commercial Code that dated from the time of the empire (acts of commerce theory).

Brazil has a complex tradition with American and other European traits. But without a doubt, Brazil is a highly court litigious country with approximately 323.2 million lawsuits, among which companies are protagonists, sometimes plaintiffs, sometimes defendants (BRASIL, 2019d).

The complexity of the cases, mainly through lawsuits in which there was no prospect of financial compensation for the damage caused (failure lawsuits) prompted Brazil to follow the isomorphic phenomenon of appropriation of regulations that already exists abroad with a relative predominance replacing legislation in need of improvement. In this regard, there were changes in the Code of Civil Procedure (2016), the Civil Code (2019) with the Law on Economic Freedom and also in the Bankruptcy Law (BRASIL, 2005; CONSELHO NACIONAL DE JUSTIÇA (BRASIL), 2021) and with more reforms arising from the attempt to adapt the Brazilian market to the OECD Standard, in order to improve the freedom and effectiveness indices, known as doing business.

The situation is complex, let's see, For legal reasons the judge can disregard the legal personality and invade the partner's assets at the request of the creditor. However, the law is clear (at least in business matters) when it submits to effective disregard if proven fraud, abuse and property confusion. The proper way to accomplish this is through an accounting expertise, which must act in accordance with career regulation, in line with international standards (PRATES, 2018). If there is expertise and the results identifying abuses, confusions and frauds, it is then possible to pierce the corporate veil.

The biggest answer in this study lies in sociology, the science that studies social phenomena and tries to formulate theories and scientific legacies that help other sciences. Specifically in the field of sociology.

Juergen Habermas is an academic professor who developed the communicative action had the understanding that matches a clear manner to solve this issue. According to his thought the judge and the experts are both actors in the process of communicative action process and through a cultural approach. They will settle agreements that will lead the case to a solution that hears not just the law but the law and the accounting paradigms that had to be accomplished in a complex case of disregard (HABERMAS, 2019).

For Munhão (2013) and Bohman & Rehg (2017) the communication is the basis for legitimizing the activity of the judiciary. Democracy finds itself in the duty to provide reasons based on persuasion, in the judicial area it is no different because judges are obliged to base their decisions and publicize them (Art. 93 of the Federal Constitution)

During data analysis the efficiency of communication between the expert and the judge will be analyzed according to criteria based on Habermas's theory of Communicative Action

communication and the effects of reports on the asymmetry of information. Habermas has pertinence when in a critical appraisal on the communication of the expert himself and how relevant is his technical affects the judge's decisions hence the communication theory is plenty of contribution in that work. This research aims to respond a vacuum of specific studies on the behavior of judges in their role as judicial players when they need technical information in the Brazilian Judicial Courts praxis.

1. PURPOSE OF THE DISSERTATION, RESEARCH QUESTION AND RESEARCH DESIGN

Here I'll explain my research design, first it's need to explain what's going to be studied by defining the research objectives, which are "Clear, specific statements that identify what the researcher wishes to accomplish as a result of doing the research." (SAUNDERS; LEWIS; THORNHILL, 2015) so, this will going gather secondary data in the court electronic cases which will be analyzed.

1.1 The overall view of the objectives

In the following lines I'll describe the ain research question and the sub questions that are up to respond the main question.

1.2 Main Questions

RQ1 The main research question is analyze the principle of the entity on the rule of judicial decision in civil law cases that uses accounting information as an evidence on the piercing of the corporate veil (disregard doctrine) and

RQ2 the influence of the expert papers in the judicial decisions using the Haberma's Communicative Action Theory applied in the accounting field research (with the emphasis on how the judges are influenced by the nominees expert reports).

That goals will be achieved for the research of the accounting information in the perception of judges when they need to decide in the business lawsuits when they have to decide the **motion to pierce the corporate veil** and to answer the main question it is necessary to answer some secondary questions;

1.3 The sub questions.

To analyze these phenomena, I will examine the following sub questions:

RQ1.3 Consultation on all finished motions and lawsuit in Brazilian the judicial related to the pierce of corporate veil in Brazilian courts (SILVESTRIN, 2015).

RQ 1.2 Find out and catalog what kind of accounting information are being used in these judicial motions (NADONE, 2017; RODRIGUES, 2014).

RQ 1.3 Catalog and classify the decisions in these motions in order of verify whether the State Judge decisions consider or not the accounting information and the force of the influence. (MEDEIROS; NEVES JÚNIOR, 2005; MUNHÃO, 2013; NEVES JÚNIOR et al., 2011)

RQ1.4 By the use of non-parametric statistics some hypothesis were put at stake in order to find out the communicative processes between the characteristics of the reports (laudo pericial) and the effective influence of them in the judicial courts. I will state the Hypothesis in the Method Section.

By these sub questions I'll going to look at the court sentences and orders in a way that a data can be extracted from that sample in order to confront with the mentioned theories.

1.4 Research Design.

For the design research I proposed the following figure that describes the whole study:

I started in the chapter 1 by the introduction and the background of that research (so as that problematic) where I explained the context and I decided to research the following research questions dividing them in one main question and 4 sub-questions.

By the chapter 2 I the relevant previous research related to this dissertation questions of research. And a I reviewed the academic papers about the subjects of this dissertation and essential papers for the empirical evidences I'll going to collect — *Etat d'Art* from Brazilian and foreign academic papers, dissertations and thesis.

In chapters 3, the entire bibliographic review was explained, comprising the Brazilian constitutional framework, the definitions in Legal and Accounting Sciences (of the Legal Entity), the concept of management and legal heritage (or estate) planning and some examples of this. I explained in comparative law the concepts of disregard of legal personality in the Anglo-Saxon world (USA and UK), as well as in Brazilian law. I then explained the role of court-appointed experts and the judicial procedure for the legal disregard. Finally, I approached the Habermasian theory of communicative action and how accounting scientists are using it to study communicative processes in academic works that can also be used in forensic accounting.

Then, I present important questions in this research that deal with forensic accounting as a factor to reduce information asymmetry and the main limitation of this research — the legal secrecy of the company's books — that could impact this study (but not totally), because I found reliable data for the next step, The non-parametric studies and the answers to some proposed hypotheses in the methodology section.

By the chapter 4 I explained the method used in this dissertation and the statistical data like as population, variables and the statistical tests and section I state my findings and criticize by the Theory of Communicative Action all the findings and the main results and perspectives for further studies.

Finally, the I wrote the conclusion and references.

2 JUSTIFICATION, RELEVANCE AND CONTRIBUTION

In his books Figueiredo (2015) Orleans e Bragança (2017) argues thar the Brazilian republic doesn’t have any institutional stability or predictability so that the entrepreneur can make a mental calculation when investing. After the downfall of political liberalism installed after the overthrow of the Brazilian monarchy in 1888, Brazil entered in a cycle of coups after coups, the most relevant being the president and dictator Getulio Vargas and the Military Government, the constitutional background in all of these was the rejection of the market economy and an expansion of interventionist policies.

As reported by Timm (2018 p. 160) there is a perception that regulation in Brazil is high to the point of discouraging investments and this it would be part of the situation in which Brazil was in 2019 in 150th position in the Heritage Foundation/Wall Street Journal's Economic Freedom ranking, 144th in the Fraser Institute's Economic Freedom ranking, and 123rd in the Economic and Personal Freedom ranking of the Cato Institute. That data shows that Brazil doesn’t give the proper instruments of incentives to attract investors what can be explained through not just by the interventionism and high regulative state but also for the weak rule of law enforcement.

As stated in Nobrega (2011) the economics of the market has direct influence of risks and opportunities and take risks is the main form of human action to start a business. In that sense the entire international community practices have some reference of limitation of liabilities in the same way the Brazilian constitution protected the free market initiatives.

Conforming to Timm (2018) the economic policy of preserving business protection has a direct impact on transaction costs, the so-called Transaction Cost Theory (TCT) and according to this theoretical construct, economic agents adapt and shape their attitudes according to

institutional incentives and risks of business. Such rules can be informal or formal, having little interest in what is in the legislation but in the praxis of society. High transaction costs also increase the social costs of the enterprise.

These costs are not only financial but also non-financial, (e.g. in the case with the preservation of corporate veil, difficult to get business licenses) all of that impacts the Brazilian economy in the World Bank's Doing Business rating. (WORLD BANK, 2021). In economic calculations, a risk is sometimes seen as an entrepreneurial opportunity. When there is no legal prediction of the state's behavior amid the breaks in the corporate veil, fewer entrepreneurs will venture into opportunities that could turn into immense losses. A risk like as an opportunity, but it can also affect goals and performance. When a risk arises from a state action or omission, this directly reduces international Brazilian indexes.

Certainty is not a constant in the market economy, which is subject to fluctuations in the dynamics of human actions and other natural factors, however having predictability about the legal structure of a state is something that reassures entrepreneurs. As stated by Nobrega (2011) the lack of predictability regarding the structure, result or consequences of a decision or planning can be classified as a risk, thus, when a nation has clear and predictable rules of its legal apparatus, it is a point of success in the rating on the international indexes of economic freedom, as a situation that entails risks tends to occur more frequently when there is a reasonable forecast of what will happen. Risk is an economic phenomenon that consists of three parts: (a) Risk, (b) Event and (c) Impact. Risk Event Probability and Impact, whereas the Event means the appearance of something that can impact the entity's earnings and the probability would be the risks of the entity's performance, and the impact would be the financial or social value related to the occurrence of this event.

In economic calculations, a risk is sometimes seen as an entrepreneurial opportunity. When there is no legal prediction of the state's behavior amid the breaks in the corporate veil, fewer entrepreneurs will venture into opportunities that could turn into immense losses, thus in-keeping-with (MAMEDE; MAMEDE, 2015a) this rule of law is essential for the progress of whole society also to avoid the abuses of the judicial power — the improvement in the issue of legal security with suitable investments, capital and talent for the republic is to be achieved.

A risk as an opportunity, but it can also affect goals and performance. In 2019 the Congress passed a law that assures economic freedom for the entrepreneurs and one of its innovations is a clear protection against abusive disregards of corporate veil without a technical judgement.

In the message of the President of Republic of Brazil (BRASIL, 2019b) in the Executive Order that would become the Declaration of Economic Rights according to the Article 174 of

Federal Constitution the fundamental argument assured that the laws and contracts should be respected by the public authorities. That message stated that the corporate veil should be respected as much as possible.

In agreement with Coelho (2005a) the corporate veil is for the law the similar institute the Entity Principle if for the Accounting, it's what makes a distinction between the partners or shareholders from the company itself. The company as a distinct existence from the people that controls or have any share of the enterprise. So, the piercing of the corporate veil is the exception not the common situation.

The procedure the judge has to follow in order to disregard the corporate veil demands him to match some prerequisites in his decision, stated by law and during a lawsuit. There are different forms of disregard I will number during this study from different areas such as Civil and corporate cases, consumer law, Lax Law and so on.

Then this research opened a discussion about how relevant are the accounting information in the judicial decisions, are the judges paying attention about the structure or content of these reports? What is their influence whenever a court have to solve a complex lawsuit about reckless administration, misappropriation, equity confusion or tax frauds? In all of that mentioned situations the court is expected to decide to pierce the corporate veil.

The accounting expert role in the due procedures about the piercing of the corporate veil are growing, specially after the Declaration of Economic Freedom, that imposed some restrictions on the judicial authorities when they have to solve related cases.

The study of the human behavior in society is the métier of the sociologic approach that can answers of this social phenomena trough theories. In this case I will use the communicative action theory of Habermas (2019) using the theory used by Munhão (2013 p. 27) in a different context and situation but his study analyzes the accountant information in judicial courts with some improvements such as:

- Characteristics of experts' reports classify for completeness
- Study the court rulings of cases that had expertise and what level the expertise influenced the judge's activity
- The use of non-parametrical statistics to find out any correlation with the completeness of the reports and the final result of the lawsuits (sentences).

Congruent with the habermasian theory of communicative action between the expert and the judge the data will be analyzed according to the sociological criteria applied to the accounting field. Prior to this Paper a research was taken to find out the state of art and the areas the habermasian theory are being study in the Brazilian postgrade programmes (Master and Phd) all of this to fulfill the vacuum of the lack of specific studies on the behavior of courts in

their role as judicial players when they use and if they are influenced by technical accounting information in their Court praxis.

This study brings up an innovative perspective of the sociological appraisal of Habermas' Communicative Action which can be defined as the a sort of cooperative action henced by individuals based on common decision and argumentation. (HABERMAS, 1990; HABERMAS; COOKE, 1988)

The Communicative Action is a inherit human capacity using the rationality with the language, especially in the way of argumentation which the individuals contests, validates, claims, vindicates or criticize by the argumentation tool. The CA is also is distinguished from other forms of action because it uses the ability of reflexing upon language is used to express the pursuit of a truth, normative sentences or just self-expression.

That research is justified by the fact that there is no specific research in Brazil about the facts that are being investigated in this dissertation. The relevance of this work

• The need for an expert opinion is valid

• Legal paradigms are still valid

• The disregard must be general (it must not be to everyone just because they are shareholders or directors) but must be directed to the cause of the hypotheses not listed.

• As debtors they must be addressed to persons, to the extent that they are responsible.

The form of the work on judicial court is through wrote petitions or hearings, then the CA validates how efficient a communication can match its goals. That achievements may be taken considering either the wrote statement of a judicial expert or the level of influence of the expert's statement. The critical observation of mentions in the judicial sentences when the judge quotes the expert's workpapers can be studied on the lenses of the CA.

In similar studies about the Haberma's Communicative Action theory in the documental research I find some elements of information to be considered in an analyses and, whatsoever, the presence an academic opinion.

2.3 The state of Art

2.3.1 Dissertations and Thesis Research and their distinction of this work

First, the essential accounting theory were raised. Therefore, a search in the databases and finally the answering of the subquestions proposed in the beginning of this study.

With the purposes of find previously related researches to my dissertation I tried in the official Brazilian databank of thesis and dissertations the BDTD (Biblioteca Digital Brasileira de Teses e Dissertações) and tip the term "**PERÍCIA CONTÁBIL**" when the system showed up **47** results for the term. After I limited the time of result for the past 10 years and judged the

rest of contents by the relevance of the abstract , I excluded any dissertation of theses that didn't referred (direct or indirectly) to Judicial Decision or at least institutions that may act in a court case (such as prosecutors), I found the cases reported in the Appendix 1

Munhão (2013) deals with the theory of Communicative Action of Habermas when in context of expert reports prepared for Court-Appointed Practitioners in the district of Tangará da Serra, MT.

The research of Rodrigues (2014) seeks to inform what is the basic training of a Contact Expert Competencies in order to carry out his/her activity.

Silvestrin (2015) studied in his work the universe in which judgments of merit are handed down in which of them there was the incidence of accounting expertise, in a somewhat different sense, the work of Nadone (2017) deals with the Skills necessary for the forensic accountant in Brazil but in the context of fraud legal cases.

The Prates (2018) it has the most recent work on the subject worked here and tries to listen to experts about their own practices that will serve to influence the judge when delivering sentences.

All of them are distinct from that research considering that the objective and the field of research is different from those previous researches.

At the foreign platforms I used the string "(TITLE-ABS-KEY (accounting) and TITLE-ABS-KEY (communicative AND action))" at the SCOPUS, 38 articles were found. After filtering for the articles published in the past ten years and by selecting the language limited to English, Spanish and Portuguese just 16 were selected, then I limited by the pertinence, and by result just 5 articles were selected for this research

By the platform Scielo some articles were also found by using the same strings I used in the SCOPUS. In the end 5 Articles were eligible for this paper.

Why Haberma's and his Communicative Action in the study of expert's in the judicial courts

TABLE 1 — Previous Research in Brazilian Postgraduation Programs on accounting in expert reports

Research Title, author and year	Object of Study	Methodology	Results	Distinction from my Research.
The suitability of expert reports prepared by accounting experts from the District of Tangará da Serra, MT (*Conformidade de laudos periciais elaborados por peritos contábeis da comarca de Tangará da Serra, MT*) (MUNHÃO, 2013)	It examines the compliance of expert reports prepared by accounting experts in the district of Tangará - MT; specific aims to verify if they follow international standards and examine contents of expert reports and sentences handed down by judges, identify the proximity of Habermas's theory of communicative action with accounting expertise	As a nature is Applied, problem approach is quali-quantitative, the objective is descriptive and the technical procedure is the document analysis.	He found that the experts' work with professional regulations was demonstrated. Regarding the theory taken to the experiment, there is closeness between the activities of judges and experts according to Habermas' theory.	This theory aims to investigate the influence of expert reports in the decision taken by the judge. It's different than mine because the sample studied is too open than mine. My research has the limitations of type of procedure (just corporate cases) and the influence is just observed in piercing of the corporate veil motions.
Competences of the accounting expert in the consolidation of his expertise **(Competências do perito contator na formação da sua expertise) (Rodrigues, 2014)**	in this dissertation, the ability required of an accountant expert on its operating area, and which are capable of being worked.	As a nature is applied, Approach Qualitative. Technical procedure as bibliographic. And the investigation took place as content analysis. The researcher used survey with a association APEJUST The were invited 518 practitioners but in the first survey they from 124, that was the sample, and 34 qualities in this data was analyzed.	From data analyses, the evidence indicates that the 69% of the practitioners felt the their academic background were unsatisfactory and the authors main conclusion that the practitioners emerges their professional ability from practice rather than theory	The results demonstrate that accountant training is related to the practice of expertise and continuing education programs. It's quite different from my research question
Expert Accounting Reports in court: a study on the rendered sentences in the city of São Paulo in the first half of 2015 ***(Perícia contábil judicial: um estudo acerca das sentenças prolatadas na cidade de São Paulo no primeiro semestre de 2015)*** **(SILVESTRIN, 2015)**	The main objective of this research is to explore the ambient where the judicial accounting expert reports take place, number the sentences and identify whose shows have an accounting evidence and identify statistical relevant patterns of behavior.	As nature that research is applied, as the approach is quantitative, as the objective is descriptive with documental analysis. This study is based on the collected in São Paulo State Court in the period of 2015 and uses quantitative methods to reach the goal.	From the collected data it is possible to realize the increase or decrease of many variables such: judicial decisions time, ratio between the number of sentences and those who have the term forensic accounting, mentions of the term forensic etc. but that research lacks a sense of utility from all the statistic data collected but no critically appraised.	This research deals with qualitative research with a descriptive focus and with statistical analysis period the sample was taken from the year 2015. Mine research deals with a longer period from 2016 to 2021 and in another state court. my research refer to Habermas's theory of communication and the Asymmetric in the Forensic Accounting.
Skills required for the forensic accountant in Brazil: perception of fraud experts (Competências necessárias para o contador forense no brasil: percepção de especialistas em fraudes)(NADONE, 2017)	identify what are the necessary skills for the performance of the forensic accountant in Brazil in the perception of fraud specialists. With specific objectives: Discuss differences in the field of action, as well as legislation applicable to auditors, accounting experts, and forensic accountants; Identify, along with the relevant literature, the skills necessary for the performance of the forensic accountant; Validate, through the Delphi technique, which of the skills evidenced in the literature are necessary for the performance of the forensic accounting professional in Brazil. In Foreigner researches, 23 competences are recognized..	As the nature this study it is applied, the approach is quantitative, the objective is exploratory and descriptive using the following statistics of descriptive statistics through the Delphi technique, which aims to reach the consensus of a group of professionals. Invitations for the survey were sent to 44 people, but the final survey had only 20 respondents.	The results showed that all the skills evidenced in foreign research (23) in the literature are relevant to the performance of the forensic accountant in Brazil. The survey suggested adding another 14 to the existing ones.	my research does not question professional competences, but is limited to studying the influence of accounting expert reports on judgments in business cases.
Perceptions of analysts in the accounting expert area of the Federal Prosecutor regarding their professional practices **(Percepções de analistas da área pericial contábil do Ministério Público Federal quanto as suas práticas profissionais)(PRATES, 2018)**	To analyze the perception of analysts in the area ofc expertise in accounting working in the Federal Prosecutor bureau about their professional practices all with the goal to improve their abilities to attend a case and in other institutional procedures.	As the nature this research is applied, as the approach is qualitative and quantitative, the objective is descriptive, ethnographic with interview and a survey and direct interviews with the analysts. From the population of 44 analysts, 16 were available for attend the research. The evaluation of 37 competences was used through the Likert scale. In this sense, a structured questionnaire was applied in order to know the importance and the domain that the sample attributed to 37 competences.	The research findings reveal that the work of the analysts in the institutional (extrajudicial) field is not part of forensic accounting which implies that they do not has to follow the international accounting standards. Analysts who work in the judicial area, on the other hand, do not act as experts directly in the court, but they only act as an assistants. By results, it was found that the behavioral skills have, not in general, greater importance and greater domain in comparison to techniques.	The difference is that this research does not directly question the characteristics of the professionals, but is limited to the fact that it studies the influence of technical reports on the judgments in corporate cases related to the motion of piercing the corporate veil.

SOURCE: THE AUTHOR

2.3.2 **The theories that are being studied in the Accounting Science academic papers on Habermasian Theory.**

2.3.2.1**Neo-marxist or progressive actions on accounting field**

Other Theories that have being studied I mention the use of innovative methods with accouting as the Overture for Organizational Transformation (OOT) “which is an emancipatory performance management and measurement framework supported by music” and have the objective to instigate a social change (MURPHY; MOERMAN, 2018; OAKES; OAKES, 2016) that studies doesn’t take part in this dissertation for the simple reason: in a lawsuitjudicial suit the ideologies have to be put aside when a judge analyses accounting information produced by the legal expert, usually that specter of relation is well studied by sociology scientific papers.

2.3.2.2 **Critical Theory and Frankfurtian theories**

On the “Critical accounting and communicative action: On the limits of consensual deliberation” the authors research the “Laughlin’s critical accounting wherein a rational consensus is reached through dialogue and debate within the parameters of Habermas’ CA through a dialectical encounter with agonistic democracy” (BROWN; DILLARD, 2013; FERRY et al., 2017) that study is fully fit with this dissertation in a case when two fields of knowledge are dialoging at stake. Congruent with Lodh & Gaffikin (1997) the Habermasian CA also contributes for the self-reflective Accounting Theory for the sake of the interconnections between history, society, organizations and the Accounting Praxis. In line with (Broadbent, Laughlin & Read, 1991, Laughlin, (1987) and Power & Laughlin (1996) the use of alternative methodologies promotes the challenges positivist epistemology in the accounting field, in consonance with Lodh & Gaffikin (1997) such positivist epistemology makes use of mathematical principles and formulas and leaves aside the fact that Accounting is a human and institutionally interested science, nonetheless Iudícibus *et al*. (2011) states that this exclusion of any of the research methods is an exercise of power by one group at the prejudice of all others.

2.3.2.3 **Sincerity principle**

In another view the academic paper an “investigation of the sincerity principle is performed by contrasting Impression Management and Communicative Action theory” (PATELLI; PEDRINI, 2014) it followed the prior studies of Yuthas et al. (2002) what also fits

with this research because the legal expert in order to have its objectives well done has not only shows some information but also has to convince all the parts in a litigation.

2.3.2.4 **Disclosure studies**

Villiers (2001) studies the communication processes (disclosure) as a tool to avoid fraud and abuses in the corporations which are seen as obligations due to the limited responsibility and corporate veil in a pragmatic way and can be seen on the lenses of Communicative Action. That veil privileges the legitimacy and transparency towards stakeholders and shareholders. That issues is also studied by Yuthas, Rogers & Dillard (2002). That line of conceptions matches with my main purposes in this Master dissertation.

3 LITERATURE REVIEW

3.3 Brazilian Constitutional framework and the Economic Freedom

The Brazilian law system is guided by a Constitution (BRASIL, 2019d) (also known as Constitution of Citizenship) and, as reported by (SILVA, 2009), emanates not just rules but core principles that are expected to be followed by nationals and foreigners in the Brazilian sphere of influence. That constitution has statements of imposition of some rules in the economic ideological agenda: is spoken about citizens rights and articles about the economic freedom. According to the constitution the economic freedom walks beside the respect for the social values of the human labor.

The private property and the economic freedom are rights in the Brazilian Economic Order, as stated by Alexandre de Moraes (MORAES, 2004) and Agra (AGRA, 2009) which have to be guaranteed by the state for the fellow citizens.

In other view consistent with (JUSTEN FILHO, 2012) the constitution sets some fundamental rights about the economic order and these rights are: (i) the capitalism and the private property; (ii) the economic freedom; and (iii) Freedom of competition. All of these rights makes a clear message that in Brazil the market economy must prevail and have to be enforced by legal measures, not the opposite.

In the sole paragraph it’s stated that exercise of economic activity is free despite of prior license (except for expressly legal activities). In 2019 the president in exercise edited a

Executive Order[1] nº 881 which lately was turned into the law nº 13.874, september the of 20th of 2019, it would come to be called the Declaration of Rights of Economic Freedom and establishes free market guarantees.

According to the World Bank indices, Brazil ranks below countries considered to be failed states. The legislation tried to change the framework when it determined that "All public ordinance rules on private economic activities are interpreted in favor of economic freedom, good faith and respect for contracts, investments and property"

> Art. 7. Law No. 10.406, of January 10, 2002 (Civil Code), becomes effective with the following changes:
> *"Art. 49-A. The legal entity is not to be confused with its partners, associates, founders or administrators.*
> *Single paragraph. Equity autonomy of legal entities is a lawful instrument for the allocation and segregation of risks, established by law with the purpose of stimulating enterprises, for the generation of jobs, taxes, income and innovation for the benefit of all."*[2](BRASIL, 2002)

This legal change came as a result of controversial issues such as the ones that the judiciary summarily decreed the breach of the company's autonomy underwent a more thorough technical review, in order to value the activity of the practitioner.

In agreement with (NOBRE JÚNIOR, 2016) The Brazilian constitution assures the free initiative by the Article 1º, IV and by the Art 170 (Economic Principles) and the right of limited liability is a clear case of public interest.

This chapter explains the evolution of Brazilian regulations regarding the principle of patrimonial autonomy of the legal entity and its convergence with the standards of other OECD countries (OECD, 2020).

There are many ways the corporation use their entities for Assets Planning there follows some examples:

3.4 The principle of legal entity (Corporate Veil)

[1] In Brazilian law it's called 'medida provisória' which free translation is 'provisional measure', I preferred to use the title 'executive order' because it's the similar institution in the north American legal system that makes sense for the academic community.

[2] Art. 7º A Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil), passa a vigorar com as seguintes alterações: "Art. 49-A. A pessoa jurídica não se confunde com os seus sócios, associados, instituidores ou administradores. Parágrafo único. A autonomia patrimonial das pessoas jurídicas é um instrumento lícito de alocação e segregação de riscos, estabelecido pela lei com a finalidade de estimular empreendimentos, para a geração de empregos, tributo, renda e inovação em benefício de todos."

In Brazilian law, the emergence of the company takes place through the registration of the Articles of Association in which the shareholders or quotaholders register their contract with the public business registration body (commercial board, in Brazil Junta Comercial), from which moment, in accordance with the will of the partners, they become an entity what fear that has its own life and assets and liabilities.

The following table explains the most used types of forms used in Brazil for entrepreneurs and the parallels in the north American jurisdiction. The most common types are LLC (sociedade limitada) it corresponds the total of 99,9% of all registered societies in Brazil because of its guarantees and simple procedure to open a business. The second type is the Corporations (S/A, or Anonymous Societies) that normally has open capital in the stock market in order to gather investments of eventual shareholders. The third model is the 'Sociedade Simples' (or just 'simple society') that doesn't give any protection for the quotaholders but they are still used by the labor cooperatives and, by a legal determination. In any form of societies enlisted above the inaugurated legal entity has an autonomous existence from its shareholdes or quotaholders.

TABLE 2 — Comparative of Structures of companies Brazil versus USA

structure	Document	US Equivalent	Document	Description
Sociedade de Responsabilidade Limitada	Contrato Social	LLC	Articles of organization	Articles of organization is a simple document that describes the basics of your LLC. It includes business information such as the company name, address, member names, and the registered agent.
Sociedade Simples	Contrato Social	No equivalents	No equivalents	This document describes the basics of partnership. It notifies the state of the partnership's existence and contains basic business information like the company name, address, and partner names. It doesn't limitate the liabilities of the quotaholders. This kind of society is used now-a-days, by legal determination, just for societies of lawyers and labor cooperatives.
S/A	Ata de Constituição	Corporation (any kind)	Articles of incorporation, Bylaws or resolutions	The articles of incorporation — or a certificate of incorporation — is a comprehensive legal document that lays out the basic outline of your business. It's required by every state when you incorporate. The most common information included is the company name, business purpose, number of shares offered, value of shares, directors, and officers.

Adapted from (SBA, 2021)

Entity theory, or just entity, pursuant to Hendriksen & Van Breda (1999) is a concept that makes distinction between transactions of partners and the corporation itself. This theory states that the assets of the partners should not be confused with the corporate's and that they should be separate, so the owners cannot be personally liable for the debts of the business. This Entity makes possible to determine the financial position of the company by distinguishing between personal assets and liabilities. This theory has the following attributes:

The company as its own name and exists as a separate entity.

It is a going concern (it has a continuous existence and independent of the changes in shareholders).

The Shareholders have limited liability.

Obligations arise only from the acts of agents of the company

The profits belong to the corporation until the dividends are declared and distributed.

Emerges either: (1) from the determination of an individual or group; or (2) by the nature of the interests of that group.

The entity theory makes a clear distinction of the owner's finances and business' and the entity accounts exclude the assets and liabilities of the owners. That theory is applicable to corporations where shareholders have limited liability. According to common law precedents the entity has the existence recognized the law of the country.

When a compared concept of entity theory between Brazil and United States is analyzed, there are some differences, In the United States of America The legal theory is considered to have started by 1600, as promulgated by Lord Coke, he stated that a company is a distinct entity or an artificial person recognized by a sovereign power. The United States Supreme court expressed by Justice John MarshalI, then Supreme Court President in the case, *Dartmouth College v. Woodward* (1819), but there was no consensus on whether the entity was created by law or by contractual relationship. (HUSBAND, 1954)

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.

The Solomon's case, in the English jurisprudence (BAILLI, 1896) is also another milestone in the origins of the entity theory. Salomon was a sole proprietor who formed a

limited company to incorporate his business. He appointed two of his sons and himself to be directors of the new company. He acquired shares and debentures from the company making him a secured equity holder.

Lately another important case emerged as a situation when the Piercing of the Corporate Veil was discussed *Berkey v. Third Avenue Railway Co 244 N.Y. 602 (* 1927) when the New York Court of Appeal decided to deny the possibility to transfer a debt from a tort from a subsidiary to the Parent Company.

In the Brazil, the Principle of Entity stems from history that dates back to Roman ordinances. The entity's principle was set forth in Art 4 of CFC Resolution No. 750-93 – which was revoked in 2016 and even though it is not in force, there is respect in the accounting sphere. The Conselho Federal de Contabilidade (1993) states as the principle of Entity.

As reported by Lagioia (2011) despite this norm was revoked by the new regulation, the Conceptual Structure of 2019 (CONSELHO FEDERAL DE CONTABILIDADE, 2019) which has no specific definition of Legal Entity as an independent principle. Actually that principle changed its nature, It's now called "postulado" (or in English 'Postulate') in Brazilian literature, postulates can be conceptualized as principles of recognized fact, but not demonstrated, or proposition not evident or demonstrable, admittedly as a principle of a deductible system, of a logical operation or a system of standards practices.

According to Favero (2009) in Brazilian accounting, the category of postulates is very comprehensive, as it involves the environment and conditions to perform the Accounting, in which I have two postulates to mention: o Postulate of the Accounting Entity and the Postulate of Continuity (going concern).

In accordance with Iudícibus *et al*. (2020), postulates are a proposition or observation of a certain reality that may be considered unverified or axiomatic. In accounting, the category of postulates encompasses an area of attraction more broader than the discipline itself and is related to certain environmental aspects surrounding the field and conditions under which accounting must act. Postulates, however, can be considered mere statements of truth, but that, because they are trivial or not delimiting the field of subsequent accounting principles, no longer useful.

My research concludes in this case the main purpose of an entity is to manage equity for the reasons of founders want whether lucrative or philanthropist, but in every case they expect protection from the state against any abuse, that's why the entities are used for equity planning and there are many ways the corporation use their entities for Assets Planning there follows some examples of legal use companies as a form of equity planning for various licit purposes:

3.4.1 **The Holding Companies.**

Holding is a Brazilian used for Brazilian practitioners for equity planning, in general, family equity planning. In order to professionalize the management of Brazilian new middle class in accordance with BIANCHINI *et al*. (2014) because the tycoons already use this kind of society.

The common procedure in this case is to create a firm with the family assets in-keeping-with Ullman (2020) the family may maintain full control in a way that can save money in the inheritance taxes and protect the going concern of the firm in the cases of succession due to the death of a member of the firm.

3.4.2 **The Offshores**

An offshore company can be defined in line with Sharma, Chrisman & Chua (2003) as any company incorporated outside the borders of a country. Offshore companies are located abroad, in countries where they charge lower taxes or offer tax exemption, keeping the identity of the owners confidential. These countries are nicknamed “tax havens”, despite the negative expression great companies also have subsidiaries in tax heavens to avoid taxes and to practice treaty shop (aggressive form of using different jurisdictions in order to save money from taxations).

3.4.3 **The Trusts.**

Trust is a form of asset protection strategy. As mentions Montana (2021), It is a legal relationship by which certain assets are managed by a formal holder (curator) for the benefit of a third party (the trust, beneficiary or beneficiaries) or for a certain purpose, which is also the holder of real rights over the same assets and receives special legal protection. The osetlor is the one who assigns the assets to the trust the main difference between it and a conventional partnership relationship is that the trust is usually established in international jurisdictions, depending on what are the additional benefits in addition to protection.

In practice, the trust is a contract between the 'Institutor' and the 'Trustee', which stipulates all the conditions that the latter must follow in the administration of the assets and in the transfer to the beneficiaries.

3.5 The Brazilian law and the disregard doctrine

Every company has (or have the goals to have) assets. In the Articles of organization of a company (contrato social) the shareholders compromise to achieve goals to acquire assets in order to grow and expand the activities and to fit the legal prerequisite to have a certain amount of assets. In foreign law doesn't have that specific necessity and the liability of the company is limited to the assets already incorporated by capital contributions

The particular have against the state is the legal safeguard against the disregard when a company is abiding on the rail tracks of the law.

In the Brazilian praxis when a some investors decide to start a business they have to state e value of the enterprise, the Brazilian law demands them to state and compromise a sum of money which may be invested either in currency or goods (tools, real state, retail) in order to start. The goal of investors is to make money from the activity by no means they want to take all their personal means. As I stated previously in this work, the investors don't expect a full disregard of corporate veil which a catastrophic whenever a company files for bankruptcy.

The Brazilian law makes a distinction between the legal entity and the personal goods of their partners or administrators, however, it's not absolute, in some cases the disregard of the corporate veil may occur and the partners and shareholders may be held accountable in some cases when they may be suffer expropriation of their personal means.

Congruent with Mamede (2018) and Timm, (2018) simple default is not a sufficient reason for disregarding legal personality in Brazilian law, the main cause is misuse or abuse. There are other situations in which the application in English law is valid that must be considered in hypotheses:

TABLE 3 — Hypothesis of disregard of legal veil according to Brazilian law.

Fraud (fraude)	**When it is used to commit crimes and fraud.**
Abuse (abuso) and deceit (dolo)	When the company's actions exceed the creditors' good faith
Irregular dissolution (dissolução irregular)	When the company ceases to function without the regular procedure and causes damage to creditors, the government or the tax authority
Assets confusion (Confusão patrimonial)	When the company's assets are confused with the partners' personal assets
Deviation of purpose (desvio de finalidade)	When the company is used for a purpose not provided for in its act of institution
Fraud against consumers and Envyromental cases	When acts of the director or manager use artifices to circumvent (or to avoid) the reimbursement to consumers due to the §5º of the Art. 28 of the Consumer Defense Code. That law can also be used in cases of damage to the environment.

Act outside the remitted powers or *ultra vires* (excesso de poder)	This term refers "beyond the powers" in Latin it occurs whenever a director acts outside his power for a purpose that the power was not created to achieve, and this action will be ultra vires.
Bad management	consistent with Phebo (2014) and Coelho (2005) is the reckless management of the business caused by the lack of preparation of the company's director.
Labor cases	A controversial issue in Brazil, where the judiciary used to disregard the corporate veil for the simple lack of money to pay off obligations arising from labor causes. That law was recently modified by the Declaration of Economic Freedom.
Bankruptcy hypothesis of Default	Happens when the judicial authorities deprivates the partners or shareholders from the control of their own assets in the Case of the Art. 82 of the Bankruptcy Law (alleged possibility of fraud of creditors)

Source: The Author.

The common basis for the piercing of the corporate veil is regulated by the Brazilian civil code in article 50, and as stated in Mamede & Mamede (2015a, 2015b) it's not the only legal possibility that the shareholders and company managers, there are also another situations when the court may disregard the corporate veil. But a essential question remains silent by the judicial precedents: that the law says in the cases of bankruptcy when the judges hold the partners accountable for de default of any credit? It could be argued that the absence of judges with experience in the business area is very small, I could see all of the 27 Brazilian states, only the states have courts specialized in business matters. (BRASIL, 2020).

The first situation is the judge demands the partners to guarantee the value the partners compromised to invest (by currency or assets) when they started the business. The judicial community just does not understand the accounting nature of that first enrollment of assets and assumes that value will last forever but the machinery will depreciate and the cash may eventually be spent during a bad season of the market.

Whenever the company doesn't have assets to pay its debts the judicial authorities deprivates the partners or shareholders from the control of their own assets in the Case of the Art. 82 of the Bankruptcy Law (alleged possibility of fraud of creditors).

Of course there are some cases whenever the partners hid the assets in order to fraud creditors and in the end of the bankruptcy the law opens the possibility to the creditors to sue the partners, directors, managers or shareholders for two years from the end of the bankruptcy judicial procedure whenever a fraud against creditors is evidenced.

In the Labor cases the situation is different in-keeping-with Longo (2014) and LUCAS et al., (2008), Pereira (2011) and Timm (2018 p. 165) the Brazilian state has string issues with labor law, there are a partial (or maybe ideologic) view of many judges which tend to take part aside the labor. Usually the companies have to make provisions for a randomly high convictions against the enterprise due to the lack of certainty in the labor norms.

In Tax law cases main motivation for the piercing of the corporate veil lays on the common situations: fraud and abuse. The disregard in tax law should obey the legal prerequisites, in line with (JARDIM, 2011), which are fraud and abuse of the corporate veil.

In the Environmental and consumer cases the judges disregard the corporate veil for any common default which is a clear abuse, congruent with Mamede & Mamede (2015a, 2015b) the law requires the judge to find the causal link of the partner's individual act and the damage caused, which is totally different from simple default.

The principle of the Entity (entity concept) states the distinction and autonomy of the assets of the corporation and its partners (REIS, 2017). In the scope of law, the Brazilian constitution declares the right of economic freedom with the limitation of the personal risks either for the companies and for the partners (BRASIL, 1988).

The right to have fair business laws in the legal ordainment is form the guarantee of legal certainty because knowing previously the potential the risks (predictably) of the company is a guarantee of Economic Freedom (GENICOT, 2020). When a citizen decides to start a business one of the things he considers whether there will be a return on the investment of his property, in the same way, the citizen is looking for the limitation of losses, in the same way a person start a business in an area that he knows little, in the same way, the citizen will not undertake whose legal risks he does not know.

It’s a fact that economic risks are hard to predict but the law doesn’t need to have this same fate, that’s why there’s an approach that considers domestic laws of each country to warn investors to potential unnecessary risks they could avoid face. That’s the importance of a predictable law.

Assuring the legal stability and regarding the investors property in Brazil only a judge may pierce the corporate veil during the ongoing open case, there are several cases when firstly requested for the litigant as states the Article 2 of the Code of Civil Procedure Act nº 13.105, of March the 16th of 2015 **(CCP)** “Proceedings are commenced by the party and moved to trial by official impulse, but for those exceptions set forth in statutory law” by that law the judge is not allowed to file a lawsuit (except legal permissions) and in that sense only a part is allowed to sue and in that suit demanding for the piercing of the corporate veil.

The declaration of economic freedom requires more professionalization of the judiciary authorities, it requires that judges consult whenever possible an expert accountant to find out if the accounting is in accordance with the standards and if the management deviates from the desired standard.

The Constitution values the Freedom of Entrepreneurship in its Art. 170, and this command must be made possible by a legal system that dialogues with the accounting field, in this case the rules will be clearer and that will not turn the entrepreneur's fresh start unfeasible — Nor the constitution should protect fraudsters — And this limit between one and the other has to do with accounting experts.

Whenever the situation when the principle of Legal Entity of the corporation is not abided, leading the assets to be used for personal reasons (as confusion, fraud and abuse) that principle may be overcome by a court order in this case the creditors may demand the partner to solve some debt or accomplish some contract by their own properties.

The judiciary in Brazil for a long time was not concerned with the technical quality of certain legal decisions taken by judges, this because the expertise in business cases had no parallels or convergences with international standards. (Brasil, 2019)

With the globalization of Brazilian Accounting standards, this issue was open to questioning. The countries tend to copy institutions, due to the isomorphic phenomenon, and listening to accounting experts is one of them. The challenge is to standardize the information produced (by regulations) and an even greater challenge is for the judge to understand and accept the expert's opinion, if possible substantiate his sentence technically instead of using common sense.

Institutions are the existing legal rules and are often common in countries (such as the practice of the person of the prosecutor being different from the judge who judges a criminal case) the standardization flows legitimacy and modernity from one international peer to other and the companies (when they decide to invest in Brazil). That is not different in the business legal issues that deals with accounting information.

So, is the court-appointed expert (whom will answer questions raised by the parties) using international standards when they express their opinions? are judges heeding experts' pronouncements, if not, why? is the communication between the expert and the judge actually effective? Does the judge consider what is being communicated by the court-appointed expert?

3.6 The procedure on disregard

The disregard doctrine in the Brazilian procedure law takes place since de old procedure code of 1973, with the new legislation there is a motion for disregard for the legal personality (ALVIM; BARROS, 2017).

The disregard doctrine, the case of the abuse of forms and assets confusion assure the Civil Code in its art. 50, institutes the Disregard of the Legal Personality (BRASIL, 2002). In the words of Fabio Ulhôa Coelho (2011, p. 153)

> [...] sometimes the patrimonial autonomy distinction of the business society gives rise to fraud. To curb them, this doctrine created, from court decisions, in the USA, England and Germany, mainly, the "theory of the disregard of the legal entity", by which the Judicial Court is authorized to ignore the patrimonial autonomy of the legal entity, always that it has been used as an excuse to carry out a debtors fraud. [3]

The civil code has some improvements by the Law of Economic Freedom which removes part of the Judge's discretion whenever he has to deal with a case of disregard, The spirit of law demanded the authority to be technical rather than arbitrary.

The corporate veil protects the person of the investor against loosing all his assets in a case of bankruptcy. I exemplified in the beginning of this word the advantages of the adoption of limited liability company and advocated how it is actually an expression of economic freedom, therefore the Civil Code has exceptions against the law protection and limitation of liability, *in litteris*:

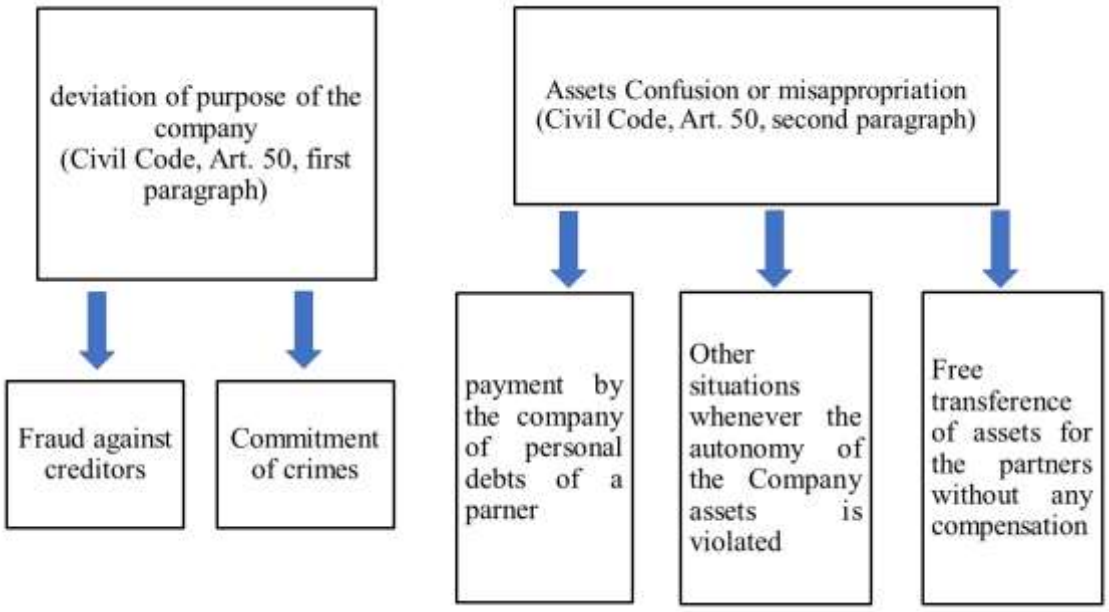
> Art. 50. In case of abuse of legal entity, characterized by misuse of purpose or confusion of assets, the judge may, at the request of the party, or of the Public Prosecutor's Office, when it is incumbent upon him to intervene in the process, disregard it for the effects of certain and certain relationships of obligations are extended to the private assets of

[3] "[...] por vezes a autonomia patrimonial da sociedade empresária dá margem à realização de fraudes. Para coibi-las, a doutrina criou, a partir de decisões jurisprudenciais, nos EUA Inglaterra e Alemanha, principalmente, a "teoria da desconsideração da pessoa jurídica", pela qual se autoriza o Poder Judiciário a ignorar a autonomia patrimonial da pessoa jurídica, sempre que ela tiver sido utilizada como expediente para a realização de fraude."

managers or partners of the legal entity directly or indirectly benefited by the abuse. (Wording given by Law No. 13.874 of 2019)

In order to explain the Figure exemplifies what are the exception in the law:

Figure 1 — Cases of disregard of legal entity in Brazilian Law

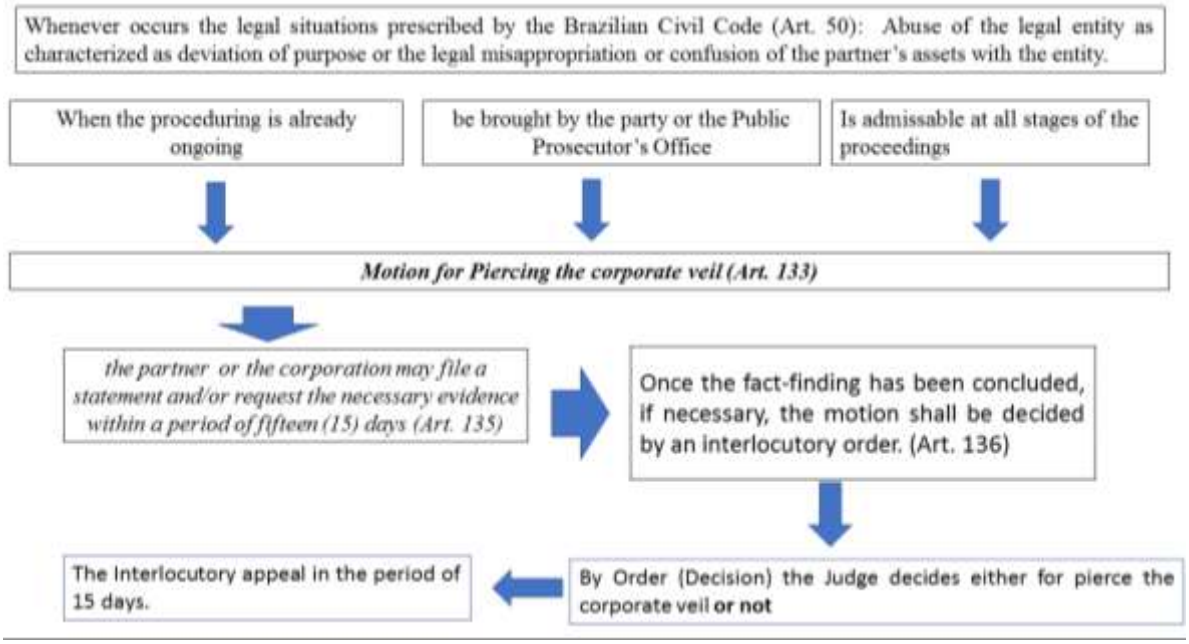


Source: The Author

By confusion is the lack of distinction between the corporate and personal assets which may be caused by payments by the society of personal debts, vice-versa, the misappropriation of assets of liabilities for the partner without counter obligations and other acts of violation of the autonomy of the entity principle.

Whenever this situation appears during an ongoing civil proceeding the party may file a motion for the disregard of legal entity (or the piercing the corporate veil) as the Figure 2 shows:

Figure 2 — the motion for piercing the legal entity according to the Brazilian judicial procedure law



Source: the author

Then whenever the situations in the Art. 50 of the Civil Code occurs a the party through his attorney my file a motion for the disregard of the legal entity so the creditors may demand the partner (or shareholder) to accomplish an obligation or pay a credit due primarily by the entity but in the case of its insolvency the shareholder due to a judicial order have now to satisfy the compliant.

By the CPP the motion may be filled by the compliant or the public prosecutor (in the cases the law prescribes) and that motion is admissible at all stages of the proceedings.

Once the motion is filled the defendant is requested to plead a formal written statement that responds to the motion's arguments articulating defense and in the same opportunity has to say which kind of evidence he will going to produce to carry with his allegations. After the defendant's allegation the judge will decide what evidences will be authorized to take place.

After the Accounting reports evidences are released the judge will be able to decide to disregard the legal personality or not, according to the reports produced.

Is the corporate cases what deals with the abuse of legal entity for misappropriation of company assets an Accounting evidence is usually demanded to take place. In the CCP (Art. 156)"A judge is to be assisted by a court-appointed expert when the evidence of the fact depends on technical or scientific knowledge." In this case the law previews when an expert opinion is required the court has to appoint an expert.

There are differences between the Anglo-saxon form the practitioner produces evidences. While in Brazil an in the other continental countries there is a person appointed by the court (perito) in the common law countries has have almost exclusively resorted to experts

retained by the parties whom will testify as a witness. Just in recent times, legislators in common law jurisdictions have demanded the option for court-appointed experts while in Brazilian jurisdictions have not any recognition of the benefits of hearing party-appointed expert.(VERKERK, 2009)

It's no comprehensible that the party-appointed experts can't be heard as legal witness but in the common law systems, experts are "…chosen by the parties, instructed and financed by them, having the same status as witnesses." (EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE, 2014) with the duty to say the truth.

In this topic I explained the legal form of disregarding the corporate veil. It was created to guarantee the defense of the Legal Entity as an entity distinct from its managers and partners, however, that legal procedure this is not the rule, but it is the exception. Many judges for procedural economy (economia processual) tend to disregard the corporate veil for personal experience when they have expertise that a fraud is happening in a lawsuit. la

3.7 The role of court-appointed experts (peritos) and the accounting reports

In the judicial process, all evidence is carried out with the main objective of convincing the judge, who presides over the court. in the Brazilian litigation system, the judge hears the parties and has the final voice through the sentence that has the force of law for the parties.

It is up to the parties to have the proper tools to convince the judge their own right, in particular, and by the norm, and whoever convinces best wins the lawsuit.

As stated in Alberto (2002 p. 51) In a business lawsuit, accounting evidence is essential for several reasons, one of which is that the accounts are in order and up to date. In my research, I deal with the disregard of legal personality in this sense, the accounting expertise is essential to prove: i) the patrimonial distinction; ii) the absence of abuse or fraud.

The accounting evidence produced by the expert has this purpose and those experts have to follow the Brazilian Accounting Counsel Rules. (CONSELHO FEDERAL DE CONTABILIDADE, 2015, 2020) and these Accountant experts use technical and scientific methods to attest to facts and theses chartered by the proper rules.

Congruent with (ALBERTO, 2002 p. 92) the Accounting evidence has to have the following prerequisites:

- Emerges from a lawsuit that needs to be solved

- Finds evidence or debunks the veracity of some situation, thing or fact
- It is based on technical, scientific, legal, psychological, social and professional requirements
- Communicates an official statement to the decision-making body (Judge) a technical or scientific opinion on the facts that will reveals to be (plausible) truth.

In order to produce expert evidence in a court case there are a series of steps, the first one starts when the judge appoints an expert to work as an assistant of the court. In other countries (common law) experts are generally qualified witnesses and must answer questions under oath.

The oath to tell the truth is a constant in the two systems of production of evidence either in common law as in the Brazilian civil law system, however, by legal determination in Brazil, the judge cannot dispense an expert evidence when its proof is necessary in the process.

By procedural legal transaction (negócio jurídico processual), the parties can jointly appoint an expert who the judge cannot refuse to accept as long as he has the necessary qualifications for the activity.

The parties can also hire assistants to express opinions on the same facts that the expert will deal with in a technical and scientific way. As it does not require an oath, the expert opinion of the parties is considered partial, that is, it may not bring the truth in an unbiased way as the expert must bring under penalty of perjury.

In spite of that, the judge remains free, and according to Article 93 of the Brazilian Constitution to accept the expert opinion of the appointee, he can give reasons in a technical way and can disregard the appointed expert and choose a report made by the assistant hired by one of the parties to provide reasons over and above that.

As reported by Alberto (2002, p. 36) the official report must carry the following characteristics:

• The delimitation of the aspects of the evidence, it happens when the expert has to solve questions that the evidence demands.

• The Expert must be intellectually independent from the parties in the lawsuit.

• The technical chartered accountant form

• The Limits of the pronouncement to the questions

• Technical or scientific knowledge on the subject.

There are cases when expert evidence may not be authorized by the judge, that happens then it does not depend on special knowledge, has already been proven or is impracticable, as well in case it is useless. The non-authorization by the judge of the production evidence by the judge may turn out to be arbitrariness because accounting science has its own postulates that are not widely known

Table 4 — Steps followed by the court in order to obtain the Accounting Expert Evidence

	Explanation
Appointment of expert (Nomeação)	The judge sends a letter of invitation for the expert
Acceptance (Aceitação)	A formal response from the expert to the court answering the desire to work in the lawsuit under oath
Request of Fees (Pedido de honorários periciais)	The formal proposal of the expert of his fees in attempt to work in the case
Deposit of fees (Depósito)	Deposit of the fees under legal custody
Request of paperwork (Pedido de exibição de documentos necessários à perícia)	Aiming to obtain access to documents and accounting reports, the expert may ask the judge to subpoena any of the parties to show the paperwork the expert needs.
Date and hour of works (Data de realização**)**	The judge states a day and hour when the expert will work on the case, in the same time, the expert assistants of the parties may also have access to the same paperwork
The Handoff of the expert evidence (Apresentação do laudo)	The expert hands off the official reports stating his results on the evidences demanded by the court.
(Petition of clarifying) Prazo de impugnação ou manifestação	The parties shall be notified so that, if they so wish, they may file a statement regarding the court-appointed expert's report.
Explanation of evidence. (manifestação do perito)	The expert appointed by the judge has the duty to clarify points regarding any divergences or doubts of differ from those presented in the party's retained expert's report.
Complementary evidence (Laudo complementar)	A judge shall determine, ex officio or at the request of the party, the production of new expert evidence when the issue has not been sufficiently clarified.
Petition of clarifying of the complementary evidence (Prazo de impugnação)	The parties shall be notified so that, if they so wish, they may file a statement regarding the court-appointed expert's report.

Explanation of the complementary evidence. (segunda manifestação do perito)	**The expert appointed by the judge has the duty to clarify points regarding any divergences or doubts of differ from those presented in the party's retained expert's report.**
End of the expert evidence works. (Fim da Perícia)	The end of the procedure of expert evidence.

Source: adapted from Magalhães (2017) and Alvim & Barros (2017)

As stated by Alberto (2002, p. 117) the fraudulent possibilities of acts are vast and demand the expert to have due diligence to track allegedly committed crimes and fraud committed to harm society. The accounting expertise is a defense of society to evidence crimes, fraudulent bankruptcies and other situations that require a technical look that the common citizen is not able to identify.

In line with Magalhães (2017, p. 18) the expert function is an essential aid in the administration of justice and a factor of legitimacy for the Brazilian judicial institution, and this is how its social effect is consolidated. The expert appointee accountant is a professional whom of *fide publica* and his function takes in to account the complexity of work in a lawsuit which as a sum of parties' conflicting interests, he takes the responsibility for his statements that are, after all, a technical support for judicial decisions all in the broad public.

As the CONSELHO FEDERAL DE CONTABILIDADE (2009) states in its norms about expert evidence the accounting expert evidence in the judicial lawsuit is a set of technical-scientific procedures intended to bring to the decision-making body the necessary evidence to support the fair solution of the dispute or fact finding, through an accounting expert report and/or technical-accounting opinion, in accordance with the legal and professional standards and with specific legislation where relevant.

TABLE 5 —Types of experts according to the Brazilian Accounting normative rules

Type of Expert	Description of the type	Normative reference
Official expert (perito oficial)	The Official expert is the one invested in the function by law and belonging to a special State body exclusively destined to produce expertise and who carries out the activity by profession, usually in police departments or Securities and Exchange Commissions	Norma Brasileira de Contabilidade NBC PP 01, from 27/2/2015, item 3.
Judicial appointee expert (perito do juízo)	Court expert is appointed by the judge, arbitrator, public or private authority to exercise accounting expertise	Norma Brasileira de Contabilidade NBC PP 01, from 27/2/2015, item 4.

Assistant expert (Assistente de Perícia)	Assistant-expert is the one hired and appointed by the party to exercise accounting expertise	Norma Brasileira de Contabilidade NBC PP 01, from 27/2/2015, item 5.
Source: adapted from NBC PP 01 from Conselho Federal de Contabilidade (2009)		

There are also other types of accounting expert evidence, but in this work I will only have focus on the judicial appointee accounting expert works. There are also extrajudicial accounting evidence (which the parties choose before any lawsuitjudicial suit to hire a chartered public accountant), additionally I mention the official experts usually public employees of investigative police agency. The Norm mentions 3 types of experts as the last Tab explained.

The present work deals with the work of the experts appointed by the judge, who as the pivot of the action, as it is trusted by the court, has the main source of the judge's decision. The expert report produced must follow the following standards prerequisites to fit the norm:

Table 6 — List of items that the expert report must contain in order to fit the Brazilian Accounting regulation.

CHARACTERISTIC	CONTENT
Identification (Identificação)	Number of lawsuit, court, section, parties in litigation, name of expert and the assistants.
Synthesis of the Lawsuit (síntese dos autos)	summary of the case file, in the content related to the purpose of the expertise.
The goals of the expert evidence (objetivo da perícia)	extracted from the order of appointment (if in the preparatory phase) or from the sentence (if in the execution phase).
Legal aspects (Diretrizes normativas)	Regulatory foundations of expert work (CPC, CPP, LPT, NBC, Laws directly related to the object in dispute).
Necessary steps (Diligências)	expert practices used in obtaining evidence.
Questions and Answers (quesitos/respostas)	transcription of each item as it appears in the file, followed by the answer based on simple language and with logical coherence, indicating (methods and practices) how it reached its conclusions.
Final statement and conclusion (Encerramento)	conclusive summary, inform communications with the assistants, number of pages and annexes, place and date, signature; listing of appendices and annexes – on a sheet after the closing term. "Appendices are documents prepared by the accounting expert; and Annexes are documents delivered to them by the parties and by third parties, in order to complement the arguments or evidence.

Source: The Author based on Conselho Federal de Contabilidade (2009) norm

These characteristics mentioned are not lone, there are another circumstances that the expert should pay attention to communicate properly the message for the court, in-keeping-with Munhão (2013): 1) the mention of proper formation (DLP); 2) A summary of content; 3) References of Accounting Theory 4) synthetic summary of information ; 5) Full answers to the question of the parties and the parts' assistants; 6) avoiding answers with the sole expressions like 'yes' or 'no' without the proper argument; 7) answering the questions in an order; 8) not contain accounting reservations; 9) to have a template; 10) Uses glossaries in the margin or footer to make content more accessible. Which one of facilitate the understanding of lay people.

3.8 The expert reports and Habermas' efficient communication.

The applied theory used to analyze how efficient is the influence of the Accounting information on the Judge's personal sphere of influence, is the Theory of Communicative Action created by Jürgen Habermas a scholar fellow of the Frankfurt School Movement (HABERMAS; MACCARTHY; HABERMAS, 2005). He is also a sponsor of the critical theory (MCCARTHY, 1991).

Several studies have already been developed in the field of this accounting technique, dealing with the quality of expert reports, judges' perception of the importance of expert reports, changes in the labor market of experts, teaching of expertise in higher education courses, importance of expertise in the detection of fraud, awareness of accounting professionals about the expert activity, etc., results are estimated in the theoretical framework .(LEITÃO JUNIOR et al., 2010; MEDEIROS; NEVES JÚNIOR, 2005) but the final aims of any report is to communicate.

The critical theory was originally created by Horkheimer, says Iudícibus et al., (2011), who tried to bring to the same field the theory and the empirical evidences and discussing them in the perspective of Action for freedom and to promoting the human being, intertwining the observation, description, explanation and transformation of phenomena, aimed at promoting life in society. Shaping a useful social science in the sense that it improves something for the people. And it implies the need to establish a "theory for communicative action" based on human interaction.

In view of one of the specific objectives of this study, a review of concepts of the Theory of Communicative Action by Jürgen Habermas, a German philosopher and sociologist, born in Dösseldorf, Germany, in 1929, representing the Frankfurt School, was carried out. name

associated with critical theory written by Horkheimer in 1937 on the Authority of Holtz, Santos & Ohayon (2020) Habermas found consonance with the critical theory, however, he breaks with some of its paradigms established in his Frankfurtian peers, specifically with regard to the establishment of a paradigm of language instead of the paradigm of work.

The frankfurt school sought to question traditional sociology through Critical Theory (with neomarxist influence), however the work of habermas went beyond mere criticism and started to have a philosophical and sociological relevance that caused the rupture between him and the other researchers of the frankfurt school.

Regarding the emergence of the Theory of Communicative Action, says Iudícibus et al. (2011, p. 8) describe that this theory originated the Critical Theory initially was formulated by Horkheimer and intended to bring theoretical formulations and empirical observations to the same level, discussing them from the perspective of liberating action (in a neo Marxist way) and the promotion of the human being, intertwining observation, description, explanation and transformation of phenomena, aimed at promoting life in society. It is undoubtedly a question of shaping “an useful social science”, in the sense that the critic is not enough but it induces the real improvement of people's living conditions in a pragmatic way. Such a project, on the other hand, developed the need to establish a “theory of communicative action”, for the reason thar an effective and also successful communication process underlies successful human interaction and helps in a practical way.

On the authority of Gilbert & Rasche (2007), to associate the Theory of Communicative Action with social accounting, affirming that Habermas presents this theory as interlocutors use argumentation to describe how they may find understanding of the issues and put an end to conflicts about norms and values. Habermas argues that any claim to seek legitimacy of normative agreement depends on a mutual understanding (communication) settled by the individuals in argument, in this case, between the judge and the Accounting Reports made by an Accounting expert

As a definition, the Theory of Communicative Action deals with the concept of the link between systems and the real world. The judge relies on his normative métier and the expert relies on his normative knowledges on accounting language.

To the degree that Habermas (2019 p. 445) argues that a solution for issues relies on social agreements from the social accepted patterns, or cooperation and can be mastered more or less economically and more or less effectively. Simple tasks, require the adequate cooperation of the activities of different people. The author describes what he calls the validity

basis where he enunciates the main points or validity claims for an effective communication process: 1) State in an intelligible form; 2) Offer the listener something he can understand; 3) Make yourself, in this way, understand; 4) Achieving the goal of understanding with each other.

In all this process the speaker must choose an intelligible form of expression (verständlich), so that both he and the listener can understand each other.

In accordance with Gonçalves (1999, p. 9) Habermas proposes an ideal model of communicative action, in which people interact and, through the use of language, organize themselves socially, seeking consensus in a way that is free from all external and internal coercion. A speech act fits into an already existing basis,

My reflections thus lead us to two provisional results: a) A speech is successful, that is, it creates an interpersonal relationship that the subject intends to establish if it is: Understandable (and acceptable) and Accepted by the listener; and b) The acceptability of a speech act depends (among other things) on the fulfillment of two pragmatic assumptions: 1) the existence of restricted contexts typical of speech acts (preparatory rule) and 2) a recognizable commitment on the part of the speaker to fulfill certain obligations typical of speech acts (essential rule, rule of sincerity);

c) The illocutionary force of a speech act consists in its ability to lead a listener to act on the condition of commitment signaled by the speaker to be sincere: 1) in the case of institutionally dependent speech acts the speaker can withdraw this binding force from existing norms; 2) in the case of institutionally independent speech acts, the speaker can develop this force by motivating the listener to recognize validity claims.

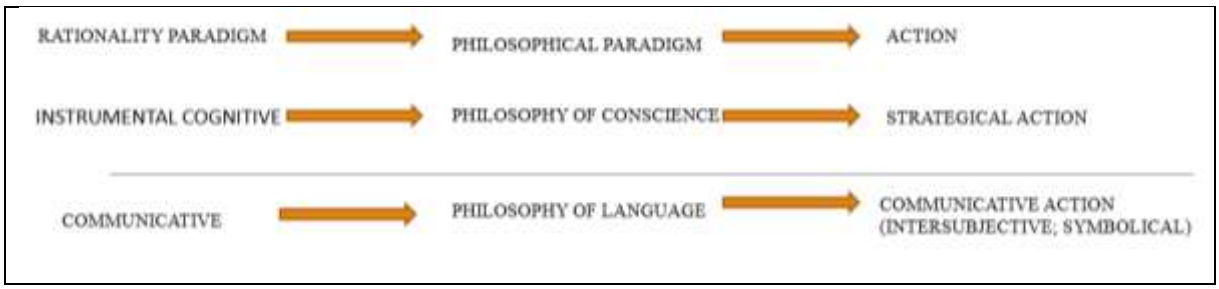
d) Speaker and listener can mutually motivate each other to recognize validity claims because the content of the speaker's commitment is determined by a specific form of appeal to a thematically stressed validity claim, in which the speaker, in a which can be tested, assumes: 1) with a claim to truth, obligations to provide grounds; 2) with a claim to accuracy, obligation to provide justifications c) with a claim of sincerity, an obligation to demonstrate its reliability.

The ideal model of communicative action affirmed by Habermas comprises communication between speaker and listener or listeners, in which the understanding and veracity of the communicated facts is sought and the understanding by the listeners is based on rules that can be preparatory; essentials and sincerity. The author also deals with the illocutionary force that leads the listener to act or not according to what is spoken in the act of interlocution.

In relation to communicative action Kelm *et al*., 2014 when systematizing the context of Habermas' language, identifies the performance of subjects/actors in the system and lifeworld. Consistent with Habermas (1989 p. 82) entities and facts are independent, in an entirely different sense, of everything I attribute to the social world and the norms depend on the fact that legitimately ordered interpersonal relationships do not cease to be reproduced. Habermas do not claim that people would like to act communicatively, but that they are demanded to do so. When individuals and groups want to cooperate, in order to live peacefully with the minimum use of force, they act communicatively. There are elementary social functions necessarily imply communicative action. In our intersubjectively shared and overlapping lifeworld, a broad consensual background is installed, without which everyday practice could not function at all.

in promoting the theoretical reconstruction of the concept of modern reason, Habermas is concerned with explanation of the limits of the social dimension in the concept he names communicative rationality. In the Habermasian theoretical reconstruction, whose paradigmatic assumption is to guarantee the interaction between subjects/social actors linked to sociocultural traditions that are distinct from each other (either by class, economically etc), which need, to establish the bases of the intersubjective understanding using the discursive and/or linguistic dimension involved in rationality. Habermas presents a theoretical broad model and advocates a construct that in which concatenates a model of rationality, a philosophical paradigm and a way of acting for social actors.

FIGURE 3 – The Language Model according to Habermas



Source: Adapted from Kelm (2004)

In this proposition there are two models of rationality, understood as the way in which knowledge is acquired and used, namely, Cognitive, Instrumental and Communicative - Rationality. As Instrumental Cognitive Reason there are the Philosophy of Conscience or Subject, according to which the perception of reality takes place in a subject/object relationship, mentally and cognitively realized, isolated and centered on the subject. Communicative Reasoning, however, calls for a paradigm (or standard) of communication, when it is necessary

to start by clarifying the communicative relationships between subjects and, on that way, is centered on intersubjectivity. But the third module of Habermas' conceptual model refers to the possible goals of communicative actions, the desired consequences that comes from the use of language, which can be understood as an action between subjects — a social action.

The author, based on the rationality model in Figure 3, applies the one defined by Habermas in order to describe the differences between Instrumental Cognitive Reason and Communicative Reason, also stating that social action occurs through speech acts, with the purpose of understanding between those involved. in speech.

Holtz, Santos & Ohayon (2020, P. 6) remembers the rationality as a key basic principle of communication as defined by the following 4 types according to the Habermasian Communicative Action:

(i) discursive rationality and reflection “we say that it not only behaves rationally but is also rational if it can prove its orientation towards validity claims. We call this type of rationality imputability”;

(ii) epistemological rationality “Our knowledge is reinforced by propositions or judgments, that is, by these elementary units that can be true or false [...] knowledge is intrinsically of a linguistic nature”;

(iii) teleological rationality “every action is intentional [...] the action has a teleological structure to the extent that all actions-intentions aim to achieve a pre-established objective”

(iv) and communicative rationality “characteristic rationality, inherent not to language as such, but to the communicative use of linguistic expressions, which cannot be reduced”.

Regarding the understanding of a necessary action between actor and interpreter, Habermas (2019 pp. 445 vol. 2) describes in order for an action to be interpreted there must be standards of judgment that the actor and his interpreter accept. in equal measure as valid, that is, as parameters of an objective or impartial judgment.

The question is whether such reasoning is also valid when it comes to accounting expertise since there are two languages at play: accounting and legal. Both are supported by the constitutional order from which legal, technical and political norms emanate. in-keeping-with Holtz, Santos & Ohayon (2020) is possible to think that Habermas had tried to describe his Communicative Action Theory trying to find a solution for the restless on the influence of

positivism in the modern societies where is present a ‘technical reason’ (also mentioned by Dimaggio & Powell (1983)) due to the effects of positivism on the society and takes in considerations the practical things such as laws, social relations, ethics and moral.

Regarding the confidence that one must have in information, the theory mentions that the close relationship between knowledge and rationality allows us to suppose that the rationality of an externalization depends on the reliability of the knowledge contained in it. The relationship of communicative reason and rationality is explained by moreira & Vasconcelos (2006) in which they establish that communicative reason extends rationality beyond the instruments of communication as it reaches social and personal spheres of action and promotes discussion and the search for understanding for symbolic interaction, including moral issues.

On the Authority of Munhão (2013) is clear that the Communicative Action is based on the rationality that motivates acts of understanding. This rationality is motivated by the conditions required for an agreement reached in a communicative way This position is in line with the role of the accounting expert, insofar as they consider it as a work of notorious specialization carried out with the aim of obtaining evidence or opinion, and add that it is intended to guide a formal authority in the judgment of a fact.

It is observed that these characteristics of the communicative action describe the action of the expert, while he translates the accounting technical information observing the norms and guidelines in order to answer the questions prefixed by the judge and interested parties in the process. In this dimension, the Theory of Communicative Action can be understood from simple concepts such as "speaking" and "acting", which deal with the act of communicating, according to holtz Santos & Ohayon (2020), in "interactions mediated by language, these two types of action are linked between itself” and found place in the Theory of Communicative Action, due to the need to improve the communication in court, emerging in the accounting environment a vision of language and communication.

Following that thought Albuquerque *et al*., (2007) also affirms:

> [...] the application of the Habermasian theory in accounting starts to be seen as a possibility of action in which, from the concepts of communicative language and emancipatory action, understood in Habermas, the accounting communication process can be seen as a process of subject-subject interaction, which, in addition to information, contributes to the emancipation of the social environment of accounting users (seen as active subjects).

The presentation of the main elements that support Habermas' Theory of Communicative Action in this study is justified by its proximity to the activity developed by the accounting expert when preparing his expert report. Thus, it can be seen in the Following Table 7 the points of convergence between the accounting expert work and the foundational dictates of Habermas' Theory.

TABLE 7: Habermas' Theory of Communicative Action and the Expert Accounting Report

Habermas' Theory of Communicative Action	Expert Accounting Report
For Habermas (1988, p. 12) these are the main spots of validity for a communicative process: • Enunciate in an intelligible way; • Offer the listener something they can understand; • Make yourself, in this way, understand; • Achieve your goal of understanding together. • Throughout this process, the speaker must choose an intelligible form of expression (*verständlich*) so that both he and the listener can understand each other.	For Alberto (2002, p. 51), the specific objectives of the forensic accounting are: • reliable information; • the certificate, examination and analysis of the circumstantial state of the object; • clarification and elimination of doubts raised about the object; • the scientific basis of the decision; • the formulation of an opinion or technical judgement; • measurement, analysis, evaluation or arbitration on the monetary quantum of the object; and • bring to light what is hidden by inaccuracy, error, untruth, bad faith, cunning or fraud.

Source: Adapted from Alberto (2002) and Habermas & Cooke (1988)

It should be noted that the close relationship of the Theory of Communicative Action with the expert practice is characterized when observing the expert work in the formation of opinion to clarify disputes. The social function described by Habermas in the definition of the "lifeworld" and the "system" subsidized by the measurement of social facts arising from the transformations of social data has its application in the expert report, as shown in Table 7.

Equilibrium depends on reciprocity between all elements of the social system. When issuing his opinion through the expert report, the expert not only responds to the questions, but also acts as a translator of the accounting language in order to provide understanding to the magistrate and the parties involved in the process.

The ideal model of communicative action is evidenced by the actions of the expert, when he opines about the accounting facts, trying to be understandable; accepted by the listener

(magistrate and parties); with a claim to truth, obligations to provide foundations; with a pretense of rightness, obligation to provide justifications; with a pretense of sincerity, an obligation to demonstrate its reliability.

In addition to the theoretical framework presented so far, the literature review is complemented with an empirical review in which the results of research developed in the area of forensic accounting are detailed (Tables 4 and 5).

With those information that research aims to use that theory in the data analyses how effective are the communication signaled by the Experts and how it is relevant during the judgments of cases of piercing of the corporate veil.

The principle of the Entity (entity concept) states the distinction and autonomy of the assets of the corporation and its partners (REIS, 2017). In the scope of law, the Brazilian constitution declares the right of economic freedom with the limitation of the personal risks either for the companies and for the partners (BRASIL, 1988).

The right to have fair business laws in the legal ordainment is form the guarantee of legal certainty because knowing previously the potential the risks (predictably) of the company is a guarantee of Economic Freedom (Genicot, 2020). When a citizen decides to start a business one of the things he considers is whether there will be a return on the investment of his property, in the same way, the citizen is looking for the limitation of losses, in the same way a person start a business in an area that he knows little, in the same way, the citizen will not undertake whose legal risks he does not know.

It's a fact that economic risks are hard to predict but the law doesn't need to have this same fate, that's why there's an approach that considers domestic laws of each country to warn investors to potential unnecessary risks they could avoid face. That's the importance of a predictable law.

Assuring the legal stability and regarding the investors property in Brazil only a judge may pierce the corporate veil during the ongoing open case, there are several cases when firstly requested for the litigant as states the Article 2 of the Code of Civil Procedure Act nº 13.105, of March the 16th of 2015 **(CCP)** "Proceedings are commenced by the party and moved to trial by official impulse, but for those exceptions set forth in statutory law" by that law the judge is not allowed to sue (except legal permissions) and in that sense only a part is allowed to file a lawsuit demanding for the piercing of the corporate veil.

Whenever the situation when the autonomy of the corporation is not abided leading the assets to be used for personal reasons as confusion, fraud and abuse that principle may be overcome by a court order in this case the creditors may demand the partner to solve some debt or accomplish some contract by their own properties.

Lots of critics of the judicial power in Brazil, for a long time, noticed it was not concerned with the technical quality of certain legal decisions taken by judges, much of it because the expertise in business cases had no parallels or convergences with international standards that had a lot precedents on the rule of technicians. With the globalization of Brazilian Accounting standards, this issue was open to questioning.

Is the court-appointed expert (whom will answer questions raised by the parties) using international standards when they express their opinions? are judges heeding experts' pronouncements, if not, why? is the communication between the expert and the judge actually effective? Does the judge consider what is being communicated by the court-appointed expert?

In this topic this research is justified by the fact that there is no specific research in Brazil about the facts that are being investigated in this paper. The relevance of this work

The relevant theory that had being studied are stated in this section which will be analyzed on the prisma of Haberma's Communicative Action and why that theory is so relevant for my main study pourpose.

3.9 The expert report as a key tool of reduction of the asymmetry in court cases and the relevance of the use of communicative action.

Informational asymmetry is a constant problem in cases as their entity is protected by the secrecy of accounting books. In this sense, if there is an accounting expertise report, the judge can have an overview to be able to decide considering the accounting facts reported by the expert.

When acting the court-appointed Expert have to follow the Federal Accounting Counsel regulation and norms as the Declaration of Professional License (Declaração de Habilitação Profissional) (DPL) prescribed in the Executive Order (Decreto-Lei) 9.295/46, the law that regulates the profession of Accountant (BRASIL, 1946). And the Second Paragraph of the art.145 of the resolution CFC Nº 871/00 (CONSELHO FEDERAL DE CONTABILIDADE, 2000).

The Reports Produced by the Experts are capable of reduce the Asymmetry in the case trial . As definition of Asymmetry I consider:

> Information asymmetry occurs when one or more parties involved in a transaction process receive trustable or more information compared to other parties that are also involved in the transaction process. For example, each manufacturer (producer) knows more or has better

> information about the quality of its products than its consumers. One way to reduce information asymmetry is by providing a quality financial reporting statement (NURCHOLISAH, 2016).

The Accounting Expert Report is regulated by the NBC TP 01 that deals with Accounting Expert (CONSELHO FEDERAL DE CONTABILIDADE, 2009, 2020), approved by the Resolution CFC Nº. 1.243/09 which prescribes:

> The Accounting Expert Report is the set of technical-scientific procedures intended to bring to the Decision-Making body elements of evidence necessary to support the fair settlement of the dispute or finding a fact, through an Accounting Expert Report and/or Accounting Expert Opinion, in accordance with the standards legal, professional, and applied pertinent specific legislation.[4]

The expert has a key role on the analysis of the accounting information hence are technical information that demands the expert to translate to the final user of the information, the judicial authority.

3.10 Accounting information in the in the civil cases and the tax confidentiality

In line with Alvim & Barros (2017) The confidentiality of corporate books is guaranteed, a situation that, however, is not absolute since, being the subject of a procedural dispute, it is not an impediment to providing books for specific issues to be resolved.

in agreement with Coelho (2005) in the business matter, many issues are decided pragmatically, for example, if a company proves to be insolvent in a collection lawsuit in which the creditor did not have assets capable of satisfying the claim, when the debtor did not name assets to the judicial arrest did not pay either, you can take two alternatives, one is to file for bankruptcy based on the emerging insolvency, the second is to find a situation where there is strong evidence of fraud.

In cases where there is evidence of injury against the creditor, it may, through legal action, request the display of accounting books such as the inventory of social assets or even the social

[4] a perícia contábil constitui o conjunto de procedimentos técnico-científicos destinados a levar à instância decisória elementos de prova necessários a subsidiar à justa solução do litígio ou constatação de um fato, mediante laudo pericial contábil e/ou parecer pericial contábil, em conformidade com as normas jurídicas e profissionais, e a legislação específica no que for pertinente.

books of the last financial years for an expert to clarify whether there has been a misappropriation of assets in favor of the partners (MAMEDE, 2008).

Speaking of informational asymmetry implies that in social relations, in a sociological conception, each person has privileged information due to the position he or she occupies. And in an organization this is not different (Ferreira, Costa, & Ávila, 2016; Silva & Cunha, 2019).

In a common market situation, agents do not have a full understanding of the information and this gives rise to speculation, which increases agency costs in contracts. In civil proceedings the Plaintiff and Defendant each have a monopoly on their own information while the other doesn't know for sure. therefore, expertise is used to reduce informational asymmetry between plaintiff and defendant.

This study that deals with judicial causes, Confidentiality is a major obstacle to data collection because many of the processes that deal with disregard in companies in operation ask for the secrecy of documents that are in a judicial process still in progress. The subject studied is a challenge and the legislation that protects tax secrecy also causes difficulties in this research that need to be considered.

4 METHODOLOGY

Flick and Flick (2013) classify the researches as the nature, approach, objective and technical procedures. As the nature this research can be asserted as applied because it has the intent to solve a specific question in the professional and legal field. This problem has an approach qualitative and quantitative (mixed method) as long as this research need both numerical data and bibliographical material to answer the main question. And the use of a non-parametrical method.

This research can be considered descriptive, since a descriptive analysis of the data obtained in the study was carried out, based on tables and organized for this purpose, and supported with descriptions of quotes from the Court-Appointed experts. As technical procedure may be classified as documentary, as the Court documentation were used as decisions (sentences) issued by judges either the first degree motions and appeals on the Courtsfrom all of Appeal related to these reports and the First level judges (*varas*).Brazil.

In similar studies about the legal experts and in the documental research in legal reports among Brazil, I found some elements of information to be considered in an analysis and, whatsoever, the presence of an expert opinion when the law is vague about the necessity of its presence as a qualified witness (MUNHÃO, 2013).

First, the essential accounting elements were raised. Therefore, an index was created to evaluate the content of the expertise carried out.

First, the essential accounting elements were raised. Therefore, an index was created to evaluate the content of the expertise carried out.

As technical procedure I used the Content Analysis so 3 (three steps were carried out)

TABLE 8 — CONTENT ANALYSIS

Step	Substeps
i) Pre Analysis	Selection of the data collected Formulation of the hypothesis and objectives Definition of indicators
ii) Data Exploration	Codification Methodological cut Classification and Aggregation Categorization
iii) Data treatment	Inferences interpretations

Source: Adapted from Bardin (1977) and

The Content Analysis has 3 steps to be done as keep-in-with Bardin (1977). As pre-analysis the corpus were both Judicial Decisions and the Expert Reports. Then I formulate further the hypothesis linked with the main Research Questions and after I formulate the indicators for our study which I propose to correlate further in the statistics the strings for research which links the characteristics of the reports, value in litigation etc. with the fact of influence in the judicial decision (as the definition of influence in this study I understand how the reports are present in the Judicial Decisions).

ii) as the exploration, second phase the Decisions and Reports were codified according to the statistical method. Our cut were in the cases that our research could not have access. We classified as it is stated in the Appendix 3. The aggregation and Categorization were dealt during the statistical tests I explain during the study;

iii) The Data Treatment (third and last step) we realized through the answers the hypothesis because I use a mixed method then it's justifiable. This research has some limitations in this step because the Foucauldian theory wasn't used in this dissertation so this study may be more developed in a further research that has mentions to the Foucault's Decision Theory.(FOUCALT, 1998)

4.1 Population and Sample of Research

To answer the objective of this work, the influence of the accounting reports in the decision on motions of piercing the corporate veil. Therefore, an index was created to evaluate the content of the gathered data.

The cases verified are from the Civil Law area to the detriment of any other area, in view of the specialization of this research being in the area of Law and private accounting in the context of business peer relations, hence I excluded incidents brought about by criminal matters and other minor areas.

I decided to look at all the courts across the country but the data only were found in the courts of the seventh bigger economies in Brazil.

The cases in which they were asked to analyze the expertise were from the states with the greatest economic power in the federation, which suggests that the professionalization of experts and even of the judicial courts may be linked to the local GDP. Of the 27 states, the largest number of skills found in my search are located among the 7 richest states in the federation: Rio Grande do Sul (29 cases); São Paulo (9 cases); Minas Gerais (4 cases), Paraná (PR) 3 cases; Santa Catarina (2 cases); Distrito Federal (DF) with one case. All of them are the 7th most richest states in Brazilian federation (IBGE, 2022).

For the purpose of finding cases in that court I accessed to the websites of all the Brazilian State Courts and after 2 weeks of collecting data I found 51 results from that courts.

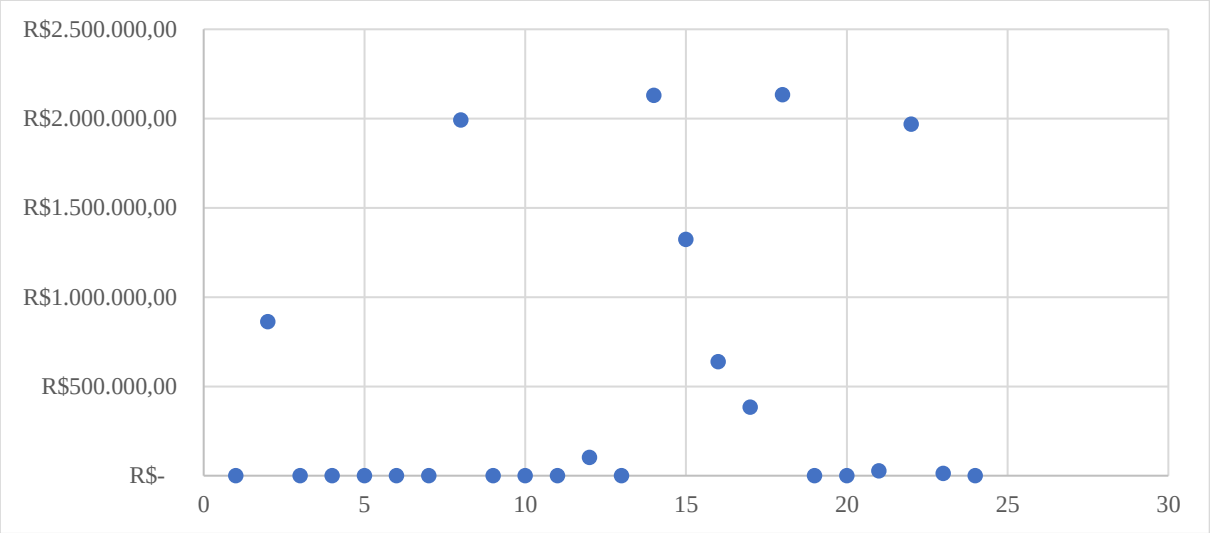
Due to the reduced number of precedents, I didn't impose restrictions on the Judicial decisions along Brazil. I excluded the physical processes (on paper) because it would make this research unfeasible.

I decided not to limit the jurisdiction because the cases of court appointed expert reports on disregard is pretty rare and had to be collected one by one across the entire country to gather a sufficient sample to apply statistics.

The reason I decided to choose that method is due to the possibility to access the whole electronic platform where is possible to read all proceeding avoiding physical contact with the court, situation that certainly would not be able to accomplish in physical proceeding papers.

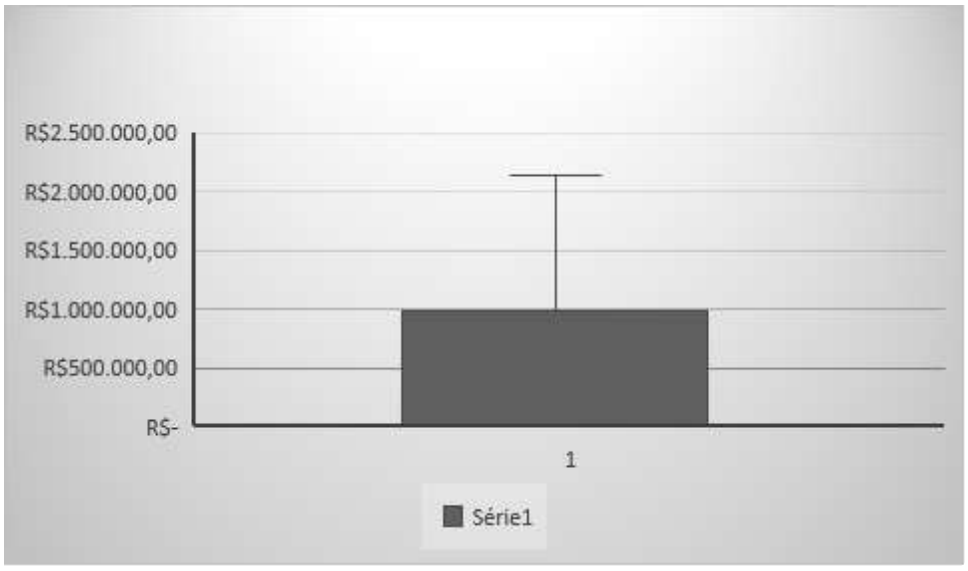
To analyze the accounting disclosure in a that as the basis of information for the Disregard Decree, an exploratory research with a qualitative approach was used. As for the purposes, the research has an exploratory character, since there is little accumulated and systematized knowledge.

Graph 1 — Value in litigation found in the sample



Only 25 of 51 cases surveyed have information about the amount under discussion in the judicial process, I have that the vast majority of cases are below 2 million, being the amplitude of the homogeneous group. **When outliers above 4 million are excluded, I have homogeneity between the following groups, being up to 2 (two) million reais:**

Graph 2 — Degree of homogeneity of value in litigation in the lawsuits



source: The Author on the research database

4.2 The variables

4.2.1 The Characteristics in the Report

The main characteristic variable of the report was treated in two ways. The first (characteristic) as a sum of 0 to 10 in which, for each mentioned characteristic, a point was added. It was later recategorized as binary in which the fact that the sentence does not use any of the following characteristics was considered 0 and that it used one or more was assigned 1:

Table 9 — the characteristic of the of Accounting Expert Report in the Proceeding

Characteristic	Explanation
• **Proceedings with DPL Declaration of Professional License (Declaração de Habilitação Profissional)**	Uses a formal declaration that the professional is regular habilitated to work in a lawsuit with the knowledge background
• **Register of content of report**	Has a formal index of contents
• **References to Accounting Theory**	Uses the state of art of accounting literature in order to work
• ***Render of the Accounting Report***	Has a synthesis of the relevant information
• **Answers to the controversy questions asked either by the parties or judge**	Answers all the questions of the parties
• **Don't have answers with the solely content of "yes" or "no"**	Doesn't have responded with a vague expression such as 'yes' or 'no' without further fundaments
• **Follows an order to answer the questions**	There the expert answers the parties question by the order of petition
• **Don't has any warning**	The report didn't gave up of answering all questions without doubt
• **Has the proper technical template**	The expert uses a template previously used in other cases he worked
• **Makes use of glossary in the margins**	Has explanation directed to lay people in order to help the parties to understand as much as possible despite the work uses accounting jargons.
Source: Adapted from Medeiros & Neves Júnior (2005), Munhão (2013), Neves Júnior et al., (2011) and the Author	

Because the number of characteristics is a fundamental element for us to analyze the communicative process, it was chosen to answer the hypotheses. Henceforth I name that "Characteristics"

4.2.2 The level of influence in the Judicial Decision

The influence on the judicial decision of the report was also analyzed in two ways where initially it was presented as ordered considering the analysis of the sentence as follows: it does not mention (1), only mentions (2), mentions and uses it in a separate field (3) or mention and use (4).

Table 10 — The relevance of influence of accounting expert reports in the judicial decisions on disregard doctrine

Criteria	Force of influence

The judgment doesn't expressly mentions the Expert Report	**1**
The judgment expressly just mentions the existence of an Expert Report	**2**
The judgment mentions and uses the Report as a source as a distinct field .	**3**
The judgment fully mentions and adopts the Accounting opinions for the purposes of the final decision.	**4**
Source: Adapted from Medeiros; Neves Júnior, 2005; Munhão, 2013; Neves Júnior et al., 2011.	

In this variable I take in account the influence of the expert on the Court's decision whether they decide to disregard or not. If the judge approves or denies the motion to pierce the corporate veil based or not on accounting evidences it's necessary to find out the relevance of Accounting reports in the Judicial Decision as a part that construct I filled with the formula from = 1 (week) (the judge don't even mentions the existence of the expert and it has no influence in the Court's decision) to strong = 4 (The judgment fully mentions and adopts the Accounting opinions as a legal argument for the purposes of the final decision of pierce or not the corporate veil) according to the gradation that follows. The data will be analyzed in the descriptive analysis from the gathered information with the critically appraisal of the content. Henceforth I name that variable "Influence".

Subsequently, it was dichotomized as follows: the sentence does not mention the report or only mentions it (0) and the sentence mentions and uses the report as a basis (of judicial decision) (1). Henceforth I name that sub variable "Usefulness"

4.2.3 The occurrence of Disregard of the corporate veil

In cases where the judge decides to pierce the corporate veil, I found a variable, which I call disregard, was also treated in a binary way in which "1", if there was no disregard and "0" otherwise. Henceforth I name that variable "Disregard"

4.2.4 The value in litigation (valor da causa)

The value in litigation in the lawsuits were analyzed in their values in currency followed by logarithmic transformation for statistical analysis minimizing bias, given the high variability

and the existence of extreme values of the variable in the univariate descriptive analysis performed. Henceforth I name that variable "Value"

All that cases will be considered the events related to that model, the frequency and the statistical accumulation. With all the numbers filled it's possible to state a model of communication. Due to the lack of a model, I propose them base on previous studies and so on doctrine, jurisprudence and current legislation

4.3 The Hypothesis on the statistics (H_n)

The Habermasian Theory has been used in the accounting research in a practical way to evaluate the process of effective communication. In order to analyze the data according to Habermasian is proposed the following hypothesis to better understand the communicative procedure. According to Laughlin (1987) and the previous studies mentioned during the *État de l'art*, the Habermas' thought offers resources to analyze the accounting as a language, as a tool of communication and that is the main purpose of that study that got samples from judicial appointee experts reports and the process of communication with the expert and the court of justice. These are the following hypothesis I propose to analyze it from the perspective of the German thinker.

H_1 The characteristics (CHARACTERISTICS) of the expert evidence reports has influence (INFLUENCE) on the Decision for Disregard the Corporate veil whether positive or negative.

Does the larger number of characteristics leads mention the report in a disregard decision? That hypothesis tries to understand in a prism of efficient communication between the court and the expert considering based on the studies *mutatis mutandis* of Cardoso *et al*., (2009) and Laughlin (1987) situation when only the communicative process is at stake.

H_2 The value on litigation (VALUE) influences the judge to consider the content of the Expert Evidence Reports on his Decision on the piercing of the corporate veil (USEFULNESS).

This second hypothesis is investigated if the economic value in litigation has influence in the usefulness of the Report directed to the judge when he has to decide on the pierce of the corporate veil (VILLIERS, 2001; YUTHAS; ROGERS; DILLARD, 2002).

H_3 Interference of Economic power (VALUE) has influence in a more complete expert evidence reports (CHARACTERISTICS).

This hypothesis analyzes the not just the economic situation, but along the lines of Iudícibus *et al*., (2011) when a possible different approach is influenced by economic actors. I define it more completely not only by the content, but also as the predilection for some line, sometimes Positivist, sometimes Normativist, in order to denote a possible capture of content by the value involved, if one or the other, the line of thought has the capacity to force the specialist to strive to take on a full-fledged work and sometimes aligned with a specific rhetoric. There are two major approaches the positive accountancy that uses a practical way, which is based on what is happening but the normative accounting is more theoretical ensuring that the reports don't stray too far from economic theories whose studies are relevant when discussing the communicative theory. In-keeping-with Chen *et al*., (2016) there's a lack of researches that joints the theoretical accounting with the empirical data, then this hypothesis is useful to fill that research gap that links the use of approach of the language and the empirical data from the statistics.

H_4 Mentions to the report (FORCE) diminishes the chances of disregard?

In that hypothesis I analyze the communication tool between the expert report and the influences in the judge decision — based on the study of Lodh & Gaffikin (1997) when the judge mentions the report has any rhetorical influence on the disregard? Does the expert report force (the fact that the decision mentions the report) has any influence in the judgement whether disregarding or not?

4.4 Data Analysis and statistical method

Initially, a univariate descriptive analysis of the variables was performed, considering the respective classifications, in which, for the categorical, the frequency distribution in absolute numbers and percentages was used and for the numerical measures of central tendency and dispersion were presented. Considering the sample size of the study, the normality of the distribution of numerical variables was verified by the Shapiro Wilk test. Given the non-normality of the distribution ($p<0.05$), non-parametric tests were applied in the inferential analysis.

The correlation between the variables was verified by the Spearman correlation test, in which the sign of the rho coefficient and the statistical significance were verified through the p-value. The results were also expressed by means of a scatter plot with presentation of the

linear trend line for the variables that were correlated. The nonparametric Mann Whitney test was applied to verify the existence of a difference between the values of the causes and the binary variables given the non-compliance with the parameters required for a parametric test (BARROS et al., 2012).

As a way of testing the existence of an association between the existence or not of disregard, and the use of characteristics, the non-parametric Fisher's Exact test was applied, since expected frequencies lower than 5 were identified in the 2 x 2 table performed

To verify the associated factors that possibly influenced the sentence, binary logistic regression was applied following the formula:

$$Logit_i = \ln\left(\frac{prob_{evento}}{1 - prob_{evento}}\right) = \beta_0 + \beta_1 X_1 + \cdots + \beta_n X_n$$

When the logit was Applied for the dependent variable: The force (or influence) force of the judicial sentence, treated in a binary way, with "1" = if the judge mentions and uses the report as a basis; or "0" = if the judge does not mention it or only mentions it, but does not use it as a basis. The independent variables used in the model were: a) the value in Brazilian currency (R$) of the value in litigation of the lawsuit (transformed into log); b) If there was disregard on the part of the judge ("1" = yes; "0" = otherwise); c) The number of characteristics ("1" = Uses one or more characteristics (as mentioned by Munhão, 2008); "0" = Does not use any characteristics) we stated in the following table:

Table 11 — Synthesis of the Logit Variables

Variables of the logit model	Type	Classification	Description
Influence (or force) in the Decision to Pierce the corporate veil (Força da sentença judicial)	Dependent	Binary	1 = if the judge mentions and uses the report as a basis (disregard); or 0 = if the judge does not mention it or only mentions it (but does not use it as a basis)
Value in litigation (Valor da causa)	Independent	Numerical	Value in Brazilian currency (R$) transformed in log
Whenever the Pierce of the corporate veil occurs (Se houve desconsideração por parte do juiz)	Independent	Binary	1 = there were disregard of the corporate veil; 0 = otherwise
Number of characteristics	Independent	Binary	1 = uses one or more characteristics; 0 = does not use non-mandatory characteristics

(Número de características)

Logistic regression models, often called logit analysis, are a technique similar to multiple regression analysis in that one or more independent variables are used to predict a single dependent variable. Logistic regression models accommodate all types of independent variables (metric and non-metric) and do not require the assumption of multivariate normality. Furthermore, logistic regression is the preferred method for binary dependent variables due to its robustness, ease of interpretation and diagnosis (HAIR JUNIOR; SANT'ANNA; GOUVEIA, 2009).In the present study, the dependent variable was considered the influence of the court decision on the binary presentation as described above.

The goodness of fit for a logistic regression model can be evaluated in two ways. One is the fit evaluation using ***Pseudo R^2 values***. The second looks in the discriminant analysis for the general predictive precision measure. Other more common techniques are the classification matrix and ***chi-square-based*** fit measures. However, the *chi-square* statistic is sensitive to the sample size, not being indicated for small samples, as identified in the present study and in the adopted model. In this sense, the value of ***Pseudo R^2*** was used to assess the quality of the model used. The regression coefficients were expressed in two ways: original and exponentiated. The interpretation of the coefficients in their original form took into account the sign (positive or negative) and the exponent, the ***Odds Ratio*** expressing the odds ratios (less than 1 is negative and greater than 1 is positive) (HAIR JUNIOR; SANT'ANNA; GOUVEIA, 2009). The classification table of the measures of sensitivity, specificity and the percentage of correctness of the model were analyzed as an additional form of evaluation of the estimated logistic model. The area under the ***ROC (Receiver Operating Characteristic)*** curve was also presented, which shows the discriminatory power of the model. (FAVERO et al., 2014) For all tests, a significance of 5% was adopted. The statistical software used was Stata® 14.0 (STATACORP, 2019). Here in the Appendix 3 the Table with the variables (in binary) of the data gathered:

5 MAIN FINDINGS AND CRITIC

Most of the analyzed expert reports in lawsuits did not have any of the characteristics listed for the present study 37 (72.5%). Regarding the influence of expert reports on the judicial decision, it was possible to identify that 43 (89.6%) of the judges mentioned and used it as a basis and in 39 (76.5%) there was disregard (Table 12).

Table 12 – Frequency distribution of the number of characteristics and the influence on the judicial decision evidenced in the analysis of the lawsuit cases. Brazil, 2006 to 2021.

Variable	n	%
Number of Characteristics of the expert report		
Does not use any of the characteristics	37	72,5
Use one or more characteristics	14	27,5
Influence of the characteristics of the expert report on court decision		
Does not mention or mentions only the existence of the report	5	10,4
Has the mention of the report and uses it as fundament in the judicial decision	43	89,6
The corporate veil was disregarded (DISREGARD)		
Yes	39	76,5
No	12	23,5

Table 13 shows a median value of R$ 589.381,10 for the lawsuits analyzed with high variability evidenced by the high standard deviation (R$ 4.087.943,00) in relation to the average presented (R$ 1.989.261,40). A lawsuit was also obtained with a minimum value of R$ 9.974,62 and a maximum value of R$ 18.014.019,39.

TABLE 13 — Descriptive Statistics on the Value in litigation (valor da causa) Brasil, 2006 a 2021

Indicators	Values
Number of lawsuits with the information of value in litigation	25
Average of values	R$ 1.989.261,40
Mediano f values	R$ 589.381,10
Standard deviation	R$ 4.087.943,00
Mininum value	R$ 9.974,62
Maximum value	R$ 18.014.019,39

It was possible to notice that there was a negative correlation between the number of process characteristics and the values of the causes ***(rho = -0.55; p-value = 0.005)*** indicating that the higher the value in litigation of the lawsuit, the smaller the number of characteristics used. Result also shown graphically through dispersion and linear trend line (graph 1). The other correlations were not significant ***(p>0.05)*** in the next table.

It can be explained that there are few well prepared Accounting Experts that deals with that kind of case and the lack of specific courts related to business and commerce lawsuits. Apparently there is a contradiction with the last two tables, but the first deals with the reports with a different approach, directed to layman while the last deals with all reports.

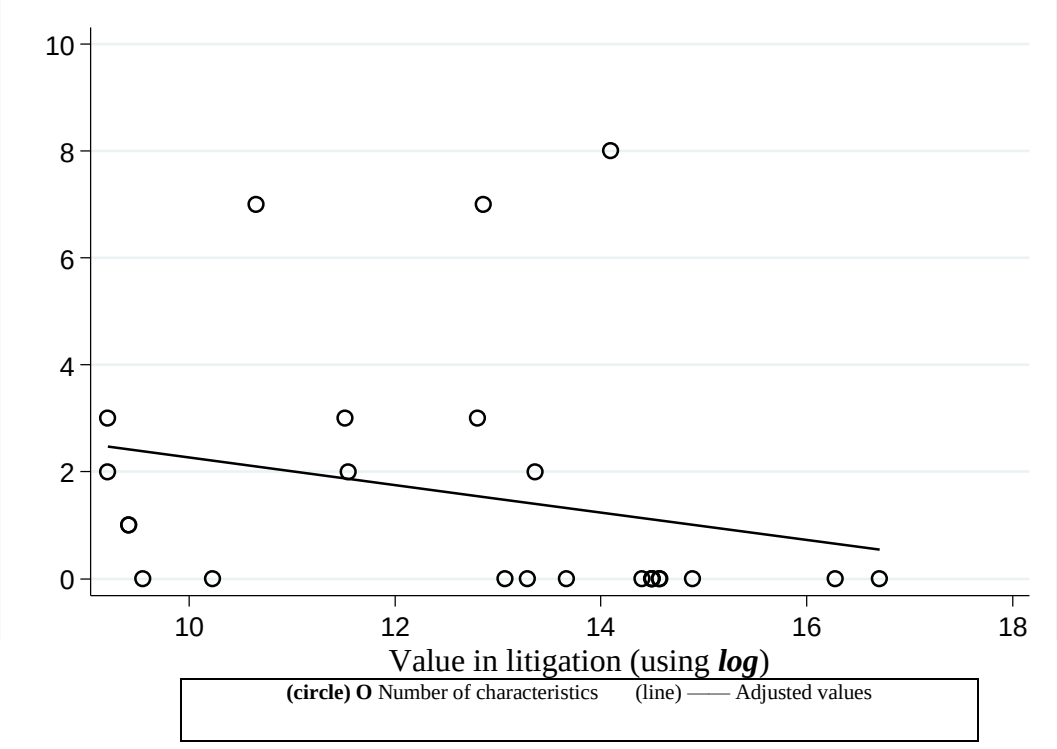
TABLE 14 — Correlation between the influence of the judicial decision, the number of characteristics used in the lawsuits and the value in litigation of the cases. Brazil, 2006 to 2021

	Influence on judicial decision	
	rho	***p-valor****
Number of Characteristics	-0,14	0,339
Value in litigation (em log)	0,00	1,000

	Number of characteristics	
	rho	**p-valor***
Value in litigation (using ***log***)	-0,55	0,005

*Spearman Correlation

Graph 3 — Graphical presentation of dispersion and linear trend of the Correlation between number of characteristics and value in litigation of the lawsuits (using log). Brazil, 2006 to 2021



The analysis of table 15 presents the multivariate analysis related to the strength of the expert report on the court sentence, whose coefficients were also expressed by the odds ratios. The result indicated that the fact that when there was no disregard, the number of characteristics and the value of the case increased the chance that the court decision had mentioned the report and used it as a basis in the process ($p > 0.05$). The model did not show high discriminatory

power considering the area under the ***ROC*** curve below 0.8, in addition to the low explanatory power evidenced by ***Pseudo R2.*** However, it has high sensitivity (100.0%) and correct model classification (91.7%) in the next table.

The value in litigation has a positive correlation with the complexity of the Report, probably influences the judge at least to consider look for help in order to understand what's being communicated by the Expert.

Table 15 – Logistic regression of the influence of the expert report in the court Decision. Brazil, 2006 to 2021

	Odds Ratio	**Coef.**	**z**	**p-valor**	**IC95%**	
Disregard of the corporate veil						
no	0,44	-0,82	-0,5	0,619	0,02	11,09
yes	1,00					
Number of Characteristics						
Use one or more	0,81	-0,21	-0,1	0,917	0,01	44,73
don't use any	1,00					
Value in litigation (using log)	0,87	-0,14	-0,31	0,757	0,36	2,11
Number of observations	24					
p-valor of the model	0,947					
Pseudo R2	0,027					
Sensitivity	100,0%					
Specificity	0,0%					
Correct model classification	91,7%					
Area under the ROC curve	0,614					

Coef. – Coeficient

Analyzing the mean value of causes, it was possible to observe that the mean value of causes was higher for those sentences that did not use any of the characteristics (p-value = 0.002) in the following table.

Table 16 – Analysis of the average value of the causes in comparison to the influence of the Report on the Judicial of the decision, existence of disregard and number of characteristics used. Brazil, 2006 to 2021

	Mean value	**p-valor***
Influence of the report in the Judicial Decision on Disregard		
Does not mention	R$ 951.827,60	1,000
mentions and uses as legal argument	R$ 2.040.025,00	
Disregard		

Yes	R$ 2.591.983,00	0,734
No	R$ 917.756,70	
Number of characteristics		
Does not use any characteristics	R$ 3.337.922,00	0,002
use one or more characteristics	R$ 272.784,00	

*Mann Whitney Test

The fact that the Report does not have more elaborate characteristics can be justified by the lack of experts specialized in the area dealt with in the process, which end up being made like other judicial expertise, succinct and pragmatic.

The training of accountants in general in Brazil can also represent this situation, since the preparation aimed at the job market with low adherence to versatile areas such as complex expertise can explain this fact (COELHO; PEREIRA, 2006).

Table 17 indicates that there was no association between the existence or not of disregard and the fact of using or not using the report's characteristics (p-value =0.066).

That explains not just the accountant tend to be attached to pragmatic work but also the courts, most of them doesn't have prepared employees to help the court during the analysis it reflects the most part of the Brazilian professionals whom are not prepared for globalization and the multi-versatile new challenges (PEREIRA, 2006)

Table 17 — Association between the existence of disregard and characteristics of the report. Brazil, 2006 to 2021

	Number of characteristics in the expert report						**p-valor***
	Does not use any of the characteristics		**use one or more characteristics**		**Total**		
	n	**%**	**n**	**%**	**n**	**%**	
Existence of disregard							
Yes	31	83,8	8	57,1	39	76,5	0,066
No	6	16,2	6	42,9	12	23,5	

Fisher's Exact Test

The reason there is no distinction between the characteristics and the occurrence of disregard may come from the reason explained above. Logically the more complete expert paper should influence the judge in the decision on disregard, but empirically in mine sample the truth goes in the wrong way. The statistics attested when the presence of a more complete (with more characteristics) didn't influence the judge, Habermas (1988, p. 12) tries to explain

this situation as follows in the main spots of validity for a communicative process: i) Enunciate (expert report) has to be in an intelligible way and; ii) has to offer the listener (the judge) something they can understand in order to iii) make himself (the expert trough the report) in this way, understanded.

The Habermasian Communication Theory presumes every part should have intention to try at least communicate but my critic is still valid by considering the other components of the Communicative Action, such as the miss preparation both either from the judge for a lack of specific clerks with expertise in accounting, either for the accountant for the lack of a good curriculum devoted in preparing reports with an accessible language. All the reports I searched during the data collecting are just attained to accounting language with no intention to spread an effective communication to laymen.

So the first hypothesis (H_1) Is not confirmed due to the lack of proper formation and the pragmatic accounting practice in Brazil with poor formation (COELHO; PEREIRA, 2006; PEREIRA, 2006) the statics only shows that the reports despite respecting the accounting regulation, they did not transmit additional information that could improve the communicative process.

The second hypothesis (H_2) that analyzes whether the value on litigation influences the judge to consider the content of the Expert Evidence Reports on his Decision on the piercing of the corporate veil. That hypothesis is confirmed but in the way of Disregarding the Corporate Veil, maybe that is a judicial bias conforming to Timm (2018) and the judge only hears the expert.

This study is not an advocacy against the disregard doctrine but to understand how the expert reports works despite the occurrence or not of the piercing of the corporate veil. However despite the value in litigation being high in the overall number of cases the court decided to pierce the corporate veil (due to the regular procedure) It's a fact that that disregard is more legitime than the cases the court not even allows the company to defend itself from arbitrary disregard according to Villiers (2001). Errors could be caused by the lack of specialized courts on business and trade as fully recommended by the CNJ (BRASIL, 2019d), anyhow if that disregard appears to occur in a regular procedure there are judicial appeals that can be used when the expert report may be in the hands of the superior courts.

Then the communication is not efficient at a point that the two parts are not understanding each other the public power tries to recommend some changes in the formation of the Courts. And specific business courts with specialized clerk with knowledge in accounting might help the judge to enter in an effective communicative action as recommended, *mutatis mutandis*, by

Kelm (2004) and Villiers (2001). The Habermasian theory proposes a parity of intellect between the parties involved in the communicative process, which in fact is a distortion (it is not a Brazilian reality). This hypothesis is not confirmed and, according to the studies mentioned, it declares that there is a lot to be done in the preparation (both of the expert accountants and the judicial courts).

The third hypothesis (H_3) deals with the fact of any interference of Economic power (value in litigation) in the capture of the accounting language used. That Hypothesis is confirmed in the sense of technicism instead an effective communicative process. but it can be explained due to the high value, The courts tend to be more sensitive to the content of the report when deciding, which indicates that the economic value in question may has political influence in marginal questions related to the correctional process due to the lack of mention of the evidences at the lawsuit there enters the sincerity principle whenever contrasting Impression Management and Communicative Action theory" according to Patelli & Pedrini (2014) and Yuthas, Rogers & Dillard (2002) when the legal expert in order to have its objectives well done has not only shows some information but also has to convince all the parts in a lawsuit the judge feels more comfortable to disregard the corporate veil or not when a Sincerity emerges what matches with Habermasian Theory. But at that hypothesis shows that the experts are limited to use a language not directed to lay people but for another accountants so it's confirmed that has some positivist capture of that reports instead of a more democratic way no communicate.

In that Hypothesis I confront the positive accounting which is more common and based on observation versus the normative accounting theory which advises policy makers on what should be based on a theoretical principle — The second approach starts with a theory and deduces the specific policies, normative works with events in the future while positive accounting at the technical data. That discussion is very important in this study that verses about communicative theory.

The H_4, which observes how the non-mandatory characteristics are efficient in the communication between the report and the judicial authority, is confirmed when the reports that shows more non-mandatory characteristics (with the aim of inform the laymen with intelligible and useful data) as presented by Munhão (2013) diminishes the possibility of disregard and raises the attention of the court to the contents of report, raising the chances of a technical mention of it in the decision, so was found by the Table 16, when shows that accountant reports are more communicative their role in the judicial lawsuits and more efficient in accordance with the studies of Lodh & Gaffikin (1997) so the and the form of the reports has a positive influence in their role as Experts.

Habermas's theory of Communicative Acting was reviewed and that study demonstrated that the research field may be benefit itself with that German theory. That study as some limitations of this research due to the secrecy of the accounting books and the paper lawsuits couldn't be consulted because of COVID 19 pandemics but any generalization can't be made with that sample and statistic.

Through the methodology non-parametric methods were used to test under the Habermasian theory 4 hypotheses derived from situations of interest and just the H_2 and H_4 were confirmed.

For further research I suggest for the peers to use the same theory in other types of judicial cases ruled in other areas such commerce and business disputes which doesn't have the legal secrecy of book, then the communicative process will have more cases for new statistics with more data.

6 CONCLUSION

Through this work, I sought to analyze from a Habermasian perspective the influence of accounting information in the view of the judge (RQ_1). Hence I consider that the legal personality and the limited liability is a protection that is guaranteed to investors and partners. So the constitutional right to limitation of liability were reviewed so as the comparative law between Brazil and the United States where also has the same protection as in Brazil. The most common types of business partnerships were also exemplified and licit estate planning.

In order to answer the main research which are analyzing the principle of the entity on the rule of judicial decision that uses accounting information as an evidence when the courts have to decide on the piercing of the corporate veil (disregard doctrine) and the possible influences of the expert papers using the Haberma's Communicative I succeeded with this dissertation (RQ_2).

The link between the law and the accountancy is short, but in order to study how the judicial authorities understand that guarantee of the entrepreneurs was also fundamental to study what are the legal conception of legal entity and its origins and when the, by the law, the judge may disregard the corporate veil in order to enforce the law to solve the creditors. There were some cases I exemplified.

For the sake to analyze how effective (or how influent) is the communication between the Expert Accounting report and Court the Habermas's theory of Communicative Acting was reviewed and applied in real cases. I also understand that the report may help the court in

pursuance for a fair trial due to the reduction of information asymmetry. through the methodology non-parametric methods were used to test under the Habermasian theory 4 hypotheses derived from situations of interest.

In my results the first hypothesis (H_1) is not confirmed due to the lack of proper formation and the pragmatic accounting practice in Brazil with poor formation and only indicates that the reports despite respecting the accounting regulation, they did not transmit additional information that could improve the communicative process. The second hypothesis (H_2) that analyzes whether the value on litigation influences the judge to consider the content of the Expert Evidence Reports on his Decision on the piercing of the corporate veil. That hypothesis is confirmed is also valid to mention that few judges at least consider read of mention some characteristics of the report in their judgments. The third hypothesis (H_3) deals with the matter of approach of the language used (normative versus positivist) that Hypothesis confirms that the experts use technicism (positivist language. The H_4 is confirmed and when the reports that shows more non-mandatory characteristics as presented by Munhão (2013) indicates when the accountants are more communicative their role in the judicial lawsuits they have their reports more considered in their role as Experts.

This research found some limitations due to the law secrecy of many lawsuits those I could count in the population on analysis which could be different with a special collaboration from the judicial power but now a days the laws open no exceptions unless not just one but both of parties need to agree in open the books for future research. Another limitations were the reverse disregard (desconsideração inversa) which this study couldn’t study due to the lack of time, then a more precise search on the results of some lawsuits that had ongoing appeals (no finished cases) because the judicial cases tend to last longer than the time of this programme, so a cross-sectional research wasn’t possible.

The time of these research was also a limitation and some cases might be missed on my view during the searches in the electronic systems of judicial power platforms and the issue of the limitations of this research due to the secrecy of the accounting books.

For further research using the Habermasian theory of communicative action in Accounting Research despite the criticisms against his theory, the critical researchers tend to seeks answers in neuroscience and through the critical assessment of speech to understand the actors in the communicative processes then, is recommended (in a doctoral thesis) for a more useful use of the collected data that the appointed judicial expert reports (laudos periciais) and with the Judicial Decision can be analyzed with the criteria of Critical Theory in a content

analysis. With the aim of knowing the meaning of reality and praxis. It is also recommended the use of interviews and surveys: with judges, with accounting professionals in order to know their training and perspectives in order to improve this dissertation on the communicative process. Another perspective may use the Foucauldian Decision Theory with emphasis on the power relations.

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Appendix A - Previous Research in Brazilian Postgraduation Programs

Research Title, author and year	Object of Study	Methodology	Results	Distinction from my Research.
The suitability of expert reports prepared by accounting experts from the District of Tangará da Serra, MT (*Conformidade de laudos periciais elaborados por peritos contábeis da comarca de Tangará da Serra, MT*) (MUNHÃO, 2013)	It examines the compliance of expert reports prepared by accounting experts in the district of Tangará - MT; specific aims to verify if they follow international standards and examine contents of expert reports and sentences handed down by judges, identify the proximity of Habermas's theory of communicative action with accounting expertise	As a nature is Applied, problem approach is quali-quantitative, the objective is descriptive and the technical procedure is the document analysis.	He found that the experts' work with professional regulations was demonstrated. Regarding the theory taken to the experiment, there is closeness between the activities of judges and experts according to Habermas' theory.	This theory aims to investigate the influence of expert reports in the decision taken by the judge. It's different than mine because the sample studied is too open than mine. My research has the limitations of type of procedure (just corporate cases) and the influence is just observed in piercing of the corporate veil motions.

Competences of the accounting expert in the consolidation of his expertise **(Competências do perito contator na formação da sua expertise) (Rodrigues, 2014)**	in this dissertation, the ability required of an accountant expert on its operating area, and which are capable of being worked.	As a nature is applied, Approach Qualitative. Technical procedure as bibliographic. And the investigation took place as content analysis. The researcher used survey with a association APEJUST The were invited 518 practitioners but in the first survey they from 124, that was the sample, and 34 qualities in this data was analyzed.	From data analyses, the evidence indicates that the 69% of the practitioners felt the their academic background were unsatisfactory and the authors main conclusion that the practitioners emerges their professional ability from practice rather than theory	The results demonstrate that accountant training is related to the practice of expertise and continuing education programs. It's quite different from my research question
Expert Accounting Reports in court: a study on the rendered sentences in the city of São Paulo in the first half of 2015 ***(Perícia contábil judicial: um estudo acerca das sentenças prolatadas na cidade de São Paulo no primeiro semestre de 2015)*** **(SILVESTRIN, 2015)**	The main objective of this research is to explore the ambient where the judicial accounting expert reports take place, number the sentences and identify whose shows have an accounting evidence and identify statistical relevant patterns of behavior.	As nature that research is applied, as the approach is quantitative, as the objective is descriptive with documental analysis. This study is based on the collected in São Paulo State Court in the period of 2015 and uses quantitative methods to reach the goal.	From the collected data it is possible to realize the increase or decrease of many variables such: judicial decisions time, ratio between the number of sentences and those who have the term forensic accounting, mentions of the term forensic etc. but that research lacks a sense of utility from all the statistic data collected but no critically appraised.	This research deals with qualitative research with a descriptive focus and with statistical analysis period the sample was taken from the year 2015. Mine research deals with a longer period from 2016 to 2021 and in another state court. my research refer to Habermas's

				theory of communication and the Asymmetric in the Forensic Accounting.
Skills required for the forensic accountant in Brazil: perception of fraud experts (Competências necessárias para o contador forense no brasil: percepção de especialistas em fraudes)(NADONE, 2017)	identify what are the necessary skills for the performance of the forensic accountant in Brazil in the perception of fraud specialists. With specific objectives: Discuss differences in the field of action, as well as legislation applicable to auditors, accounting experts, and forensic accountants; Identify, along with the relevant literature, the skills necessary for the performance of the forensic accountant; Validate, through the Delphi technique, which of the skills evidenced in the literature are necessary for the performance of the forensic accounting professional in Brazil. In Foreigner researches, 23 competences are recognized..	As the nature this study it is applied, the approach is quantitative, the objective is exploratory and descriptive using the following statistics of descriptive statistics through the Delphi technique, which aims to reach the consensus of a group of professionals. Invitations for the survey were sent to 44 people, but the final survey had only 20 respondents.	The results showed that all the skills evidenced in foreign research (23) in the literature are relevant to the performance of the forensic accountant in Brazil. The survey suggested adding another 14 to the existing ones.	My research does not question professional competences, but is limited to studying the influence of accounting expert reports on judgments in business cases.

Perceptions of analysts in the accounting expert area of the Federal Prosecutor regarding their professional practices **(Percepções de analistas da área pericial contábil do Ministério Público Federal quanto as suas práticas profissionais)(PRATES, 2018)**	To analyze the perception of analysts in the area ofc expertise in accounting working in the Federal Prosecutor bureau about their professional practices all with the goal to improve their abilities to attend a case and in other institutional procedures.	As the nature this research is applied, as the approach is qualitative and quantitative, the objective is descriptive, ethnographic with interview and a survey and direct interviews with the analysts. From the population of 44 analysts, 16 were available for attend the research. The evaluation of 37 competences was used through the Likert scale. In this sense, a structured questionnaire was applied in order to know the importance and the domain that the sample attributed to 37 competences.	The research findings reveal that the work of the analysts in the institutional (extrajudicial) field is not part of forensic accounting which implies that they do not has to follow the international accounting standards. Analysts who work in the judicial area, on the other hand, do not act as experts directly in the court, but they only act as an assistants. By results, it was found that the behavioral skills have, not in general, greater importance and greater domain in comparison to techniques.	The difference is that this research does not directly question the characteristics of the professionals, but is limited to the fact that it studies the influence of technical reports on the judgments in corporate cases related to the motion of piercing the corporate veil.

SOURCE: THE AUTHOR

Appendix B - List of experts that I kept in touch

Expert	Telphone	E-MAIL
Leandro Gonçalves Borges	(11) 4163 - 4897	leandro@teampartner.com.br; pericia@teampartner.com.br
Márcia de Souza Montanholi	(11) 2589-1447/97165-0405	mmontanholi@yahoo.com.br
Everaldo Texeira Paulin	(11) 3079-6899	perjud146@yahoo.com

Mauro Stacchini Jr.	(11) 3871-0506/97635-2775	mauro@actual.sc/ luiz@actual.sc/fernando@actual.sc
Carolina Laskowski	N/A	pericias@me.com
Silvio Lopes Carvalho	(11) 3107.5356/ 3242.2254/ 3107.3846	N/A
Watanabe Assessoria Contabil	(11) 3257-7739	contato@watanabeassessoria.com.br
Aderbal Muller	(11) 98861-2112	pericia@pericia.pro.br
Adriana Lucena	(11) 3159-2663	adriana@lucena.adv.br

Appendix C – Data Gathered from Judicial databasis

LAWSUIT NUMBER	PARTS IN LITIGATION	ECONOMIC INTEREST	INFLUENCE (PRESENCE) IN THE JUDICIAL DECISION	DISREGARD OF THE CORPORATE VEIL	NUMBER OF CHARACTERISTICS
0001391-20.2019.8.26.0100	Traço Comércio x TT Master	R$ 100.223,54	2	1	2
0001766-70.2019.8.26.0116	Rap Indústria e comércio e alimentos x Araucaria Indústria e comércio de alimentos, Campos de Cacau e Marcos Arthur Gerlinger	R$ 9.974,62	4	0	2
0004193-53.2017.8.26.0296	Renato Terassovich X Pharmainox Indústria e comércio	R$ 42.435,00	4	1	6
0008463-74.2019.8.26.0127	Bruno Arcari Brito X Drogaria Super Farma de Carapicuíba	R$ 363.343,14	4	0	2
0010367-78.2020.8.21.7000	Recorrente: Laerte Wanderley Sopper X Recorrido: GS Negóscios Imóbiliários LTDA	R$ -	4	0	0
0011026-42.2021.8.16.0000	Aroldo Correa Soares X Gilmar Trivelatto e outros	R$ -		0	0
0011026-42.2021.8.16.0000 AI/ 0014932-16.2017.8.16.0021	SEGREDO DE JUSTIÇA	R$ -	4	0	0
0016080-34.2020.8.21.7000	Agravante: Madegisa investimentos e representações LTDA X Massa Falida da Engemaq Equipamentos para petróleo S.A	R$ -	4	0	0
0019818-10.2016.8.07.0000/991078	agravante: Maia Gama Supermercados LTDA e outros X Distrito Federal	R$ -	2	0	0
0024.10.257.523-0	Massa Falida de Acv engenharia e projetos LTDA X Aquiles Augusto de campos Vasconcelos e outros	R$ 474.352,96	4	0	0
0027259-51.2020.8.16.0000	SEGREDO DE JUSTIÇA	R$ -	2	0	0
0030920-38.2020.8.16.0000	SEGREDO DE JUSTIÇA	R$ 2.947.340,08		1	0
0031265-50.2019.8.26.0100	Adm Judicial da Master Doc x Elza Aguiar (sócia)	R$ 10.000,00	4	0	2
0031312-92.2017.8.26.0100	Adm judicial X Tesc Sistemas de Controle Ltda	R$ -	0	0	8
0040428-63.2013.8.21.7000	Apelante: Christiane de Macedo Bittencourt e outros X Apelado: Massa falida de Oficina de camisas IND e Comercio de confecções LT	R$ -	4	0	0
0041847-79.2017.8.21.7000	Agravante: Massa falida de Frigorifico Perini S.A x Agravado: Osvaldo Luiz Maestri Scalzili	R$ 1.803.431,61	2	0	0

0045655-97.2014.8.21.7000	A.M.M X R.I.B.M	R$ -	4	0	0
0050608-60.2021.8.21.7000	Minstério Público X Marines Radavelli	R$ 12.255,00	4	1	0
0054696-83.2017.8.21.7000	Apelante: Jeronimo da veiga Lima e outro X Apelado: Massa falida de autolume acessorios para veiculos LTDA	R$ 1.985.882,48	4	0	0
0057013-54.2017.8.21.7000	apelante: espolio de Jovencio Vivian e outros X Apelado: Vivian Serviços Metalurgicos LTDA	R$ 589.381,06	4	0	0
0057547-56.2021.8.21.7000	Minstério Público X Marines Radavelli	R$ 12.255,00	4	1	0
0088974-08.2020.8.21.7000	Agravante I.P X Agravado A.Q.P (MP interessado)	R$ 11.785.067,71	4	0	0
0090974-79.2014.8.13.0479/0065778-10.2014.8.13.0479	Paulo de Araújo Rodrigues e outros X Itaiquara Alimentos S/A e outros	R$ 18.014.019,39	4	0	0
0098163-10.2020.8.21.7000	Agranvante: Diogo André Marchioro e Rosemari Maria Zago X Zago & Marchoro Comercio de moveis LTDA	R$ -	4	0	0
0111456-23.2015.8.21.7000	Embargante: Jose Luiz Machado X Emargante Jacui - Comercio e transporte de combustiveis LTDA e outros	R$ -	4	0	0
0119099-56.2020.8.21.7000	Agravante Patricia Zanella Romani e outros X Rodrigo Cegala e Romani Cegala LTDA (agravados)	R$ -	4	0	0
0128099-67.2009.8.26.0003	Telefônica Brrasil S.A X Zenilson Rodrigues e Distribuidora Ruman Ltda	R$ -	4	0	2
0149795-85.2014.8.21.7000	Agravante: Pedro Henrique Perna Bronstrup X Massa falida de Brita Mineração e contrução	R$ -	4	0	0
0156383-45.2013.8.21.7000	Apelante: José Cristiano Pithan Daudt x Apelado: Massa Falida de Industriais Gummy S/A	R$ 862.317,98	4	0	0
0238542-45.2013.8.21.7000	SEGREDO DE JUSTIÇA	R$ -		1	0
0243617-89.2018.8.21.7000	Recorrente: Massa Falida de Arca Calçados LTDA X Recorrida: alexandra Joanna Joannou	R$ -	4	0	0
0281614-48.2014.8.21.7000	VG Estetica Corpo e Cabelo LTDA X Massa falida TBA do Brasdil distribuidora de produtos LTDA	R$ -	4	0	0
0289669-80.2017.8.21.7000	Recorrente: Massa falida de Frigorifico Perini S.A X Recorrido: Ministerio público.	R$ -	4	0	0
0297771-23.2019.8.21.7000	Agravante: Massa Falida de Villa D/'Este COM X Agravado: VILLA D/'ESTE COM	R$ -	4	0	0
0301178-88.2015.8.24.0082	Apelante: Marlon Amaral da Rocha X Apelado: Prime Connect Telecomunicações Ltda	R$ 1.992.000,00	4	1	0
0370927-54.2013.8.21.7000	Apelante: Flavio Possani x Apelado: Massa falida de organizações nova prova grafica e editora LTDA	R$ -	4	1	0
0393395-70.2017.8.21.7000	Recorrente: Massa Falida de Arca Calçados LTDA X Recorrida: alexandra Joanna Joannou	R$ -	4	0	0
0433969-72.2016.8.21.7000	Rio grande do sul x André Zommer e Hélia Zommer	R$ -	4	0	0

047912003163-4	Ministério Público de MG X Ataíde Vilela e outros	R$ 103.900,00	4	0	2
0505440-90.2012.8.21.7000	Apelante: Celso de Conto e outros X Apelado Massa Falida de Garagem Estoril LTDA	R$ -	4	0	0
070715019739-0	Três Marias Exportação e Importação X Café Solúvel Brasilia	R$ 2.130.333,46	4	1	0
1050759-20.2015.8.26.0100	Apelante: Laboratório Farmacêutico Elofar LTDA X Apelado: Lourival Turcio	R$ 1.323.269,50	4	0	7
1086161-26.2019.8.26.0100	Banco Daycoval S/A X Sergio de Goes Mascarenhas	R$ 638.359,47	4	1	1
1109145-72.2017.8.26.0100	SEGREDO DE JUSTIÇA	R$ 384.608,72	4	1	6
2014.072687-7 (IDPJ 008.09.007000-0)	IDPJ MP X Plus Fomento Mercantil LTDA	R$ 2.135.000,00	4	0	0
70017554668/2006	Agravante: Gelson Valdir Gattiboni x Agravado: Massa Falida de Uruguaiana Administradora de consorcios LTDA	R$ -	4	0	0
70020524930/2007	Agravante: Brasilplast Industria de Sinteticos LTDAX Agravado: Massa Falida de A G B Calçados LTDA	R$ -	4	0	0
70020919460/2007	Apelante: João Jose Ney e outros X Apelado: Roliver industria termoplastica LTDA	R$ 27.721,39	4	0	0
70025985805/2008	apelante: Vanicia de Souza Borba e outros x Apelado: Massa Falida de Moveis Borba LTDA	R$ 1.970.006,97	4	0	0
70026760413/2008	Apelante: auto Factoring LTDA e outros X Planauto Administradora de consorcios ltda	R$ 14.056,00	4	0	0
70033562026/2009	Ministério Público X João carlos leal e Massa Falida de Sociedade Agricola Nova Vida LTDA	R$ -	4	1	0