

CORPORATE CRIMINAL LIABILITY  
UNDER THE COMPANIES ACT

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## CHAPTER 1

### INTRODUCTION

Initially, it was said that a corporation had no mind, could not will, and so could not personally entertain the intent necessary to commit crimes. Powers were never explicitly conferred enabling the corporation to commit crimes. Therefore, it was said, the commission of any crime was necessary ultra vires a corporation and could not be imputed to it.<sup>1</sup> But now, the question of whether a company ought, on grounds of public policy, to be made criminally liable has been answered in the affirmative by the courts.<sup>2</sup> As we have seen now, the law which stands today is that a company may be prosecuted for the crimes of its officers or employees if the statute creating the offence is interpreted as imposing liability on the employer as well as on the officer or employee.<sup>3</sup>

Bowen L.J. in R. v Tyler Commercial Co.<sup>4</sup> held that where a duty is imposed on a company by statute, such as the duty to register the names of its members imposed by the Companies Act, 1862, a breach of such duty is indictable in the absence of any indication to the contrary in the statute. The Supreme Court of Canada has held in Union Colliery Co. v H.M. the Queen<sup>5</sup> that a corporation may be indicted under Section 213 of the Criminal Code for omitting without lawful cause to perform the duty of avoiding danger to human life from anything under its control, and in this case, the company had failed to maintain a bridge over which it ran trains.<sup>6</sup> In America, the systems of corporate criminal liability developed by their courts and commentators carry different

degrees of deterrent effectiveness and reflect varying notions of corporate blameworthiness. The doctrine of respondeat superior, which predominates in the Federal Court, offers the greatest deterrent strength and adopts the first theory of corporate blameworthiness.<sup>7</sup>

In India the criminal liability of corporations is governed by the Penal Code 1872 and the General Clauses Ordinance 1888 and when these statutes were introduced in the Straits Settlements, it was an accepted principle that corporations may be criminally liable for certain offences.<sup>8</sup>

Section 11 of the Penal Code 1872 provided that:

"The word person includes any company or association or body of persons, whether incorporated or not".

Similarly, Section 3(22) of the General Clauses Ordinance is in pari materia with the provision of Section 11 of the Penal Code 1872.<sup>9</sup>

Section 3(22) of this ordinance provided that:

"Unless there be something repugnant in the subject or context". "Person" shall include any company or association or body of individuals whether incorporated or not."

The provisions of these statutes are still retained both in Malaysia and Singapore but Section 3(22) of the General Clauses Ordinance was wider than S.11 of the Penal Code as it applied to every written law.