

CRIMINAL LIABILITY OF CORPORATIONS

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PREFACE

The scope of this project paper is to analyse comprehensively the state of Malaysian law dealing with the criminal liability of corporations. It relates the existing law to both its own history and to its modern social background. From that discussion it proceeds to explore the existing weaknesses and review the possible directions which improvement might take.

This paper does not purport to be an authority on corporate criminal law. It represents the thoughts of a law student put in print so that it may be shared in common with other students in ITM. There was some difficulty in the selection of the subjects for discussion as the biggest limitation was that of space. Its production was based solely on case study/library research.

The rough copy of this paper was about ready in March. It was reviewed twice by Mr. Y.R. Vyas, a writer on corporate law and my supervisor, who made excellent suggestions and offered guidance and materials, some of which have been incorporated in this paper. To this kind-hearted man, my thanks are due.

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CHAPTER I
INTRODUCTION

Ever since Salomon v Salomon and Co. Ltd.¹ it has been accepted in the English and Malaysian legal systems that a corporation is a separate legal person. And as a legal person, a corporation can commit crime. According to S11 of the Penal Code², a "person" includes a company or association or a body of persons whether incorporated or not. Further, by S3 of the Interpretation Act 1976, a "person" includes a body of persons corporate or incorporate. Hence, by S2³, "every person (including a corporation) shall be liable to punishment under this code..."

In theory the law regarding the criminal liability of corporate bodies looks conclusive and neat. However, in practice this is not really so. There are still problems that need to be ironed out. Firstly, how does one determine the mind of the corporation when it comes to crimes of mens rea? And it has been held in Yue Sang Cheong Sdn. Bhd. v PP⁴, that a limited company cannot be guilty of a criminal offence involving mens rea without the proff of the guilty mind of its agents or officers. Secondly, how does the court award punishment upon the corporation when it has no "soul to be damned and body to be kicked"?⁵

The problem of attributing criminal liability to a corporation is best considered under three heads although there may be considerable overlapping of the areas covered by them. These heads are the legal, sociological and criminological aspects. The first is concerned with the legal nature of the corporate personality, the capacity of a corporation to form a mens rea and commit an actus reus, and the role of the ultra vires rule. The second is involved with questions governing the operation of the corporation in practice such as its spheres of activity and its management all of which present divergent pictures depending on factors such as whether the corporation is a multi-national or national group or a mere street corner company. The third is concerned with the ends it is proposed to achieve by imputing criminal responsibility to a corporation and what sanctions are appropriate.

¹ (1897) AC 22

² FMS Cap 45

³ FMS Cap 45

⁴ (1973) 2 MLJ 77

⁵ per Lord Denning British Steel Corporation v Granada Television (1981) 1 AER 417 at p 439.