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CORPORATE CRIMINAL LIABILITY: IMPERATIVES OF CRIMINALISING CORPORATE WRONGS

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1.0 INTRODUCTION

The dictum of Lord Macnaghten in the famous case of *Salomon v. Salomon & Co Ltd*¹ laid the foundation of the idea of corporate crime. The case establishes the principle of corporate personality, which is that a company is a person in law, separate and different from its owners. The legal personality also confers on the company rights and duties.² Therefore, like an individual, a corporation becomes independent and free to make its own choices and decisions including the capacity to do wrong. Thus, it is the recognition of legal personality that confers rights, privileges and liabilities on a corporation including the capacity to sue and be sued.

Originally, it was inconceivable that a corporation could be held to commit a crime as the idea of a corporation as a 'person' seemed like a fiction.³ In addition, it was believed that the criminal law was developed with the natural person in mind and thus, the basic criminal law ingredients could not be adapted to a corporation which is an artificial entity.⁴ The

1 (1897) AC 22

2 The common law position enunciated in *Salomon v. Salomon* has been incorporated and domesticated in section 37, Companies and Allied Matters Act Cap C20, LFN (2004) the effect of which is that from the date of incorporation of a company, the members of the company shall become a body corporate by the name contained in the memorandum of association.

3 V. S. Khanna, „Corporate Criminal Liability: What Purpose Does it Serve? 109 Harv. L. Rev. (1996), pp1477- 1479 In fact, criminal prosecution of corporations and other fictional entities started in the UK in the 19th century and the US in the beginning of the 20th century. Netherlands, Canada and France only in the late 20th century made provisions for holding fictional entities criminally liable. See also, Corporate Criminal Responsibility Critique of Corporate Criminal Liability CORPORATE CRIMINAL RESPONSIBILITY (20 October, 2011, 10:00am) <<http://law.jrank.org/pages/745/c-c-r-critique-c-c.html>>

4 V. S. Khanna, „Corporate Criminal Liability: What Purpose Does it Serve?

corporation regarded as an abstraction in law, was believed to be incapable on its own of a *mens rea*⁵ and an *actus reus*,⁶ and so could only act through its human agents⁷ and this very fact negates the fundamental principle of criminal law which is based on individual autonomy. However, the significant increase in the growth and size of corporations over the past few decades necessitated a rethinking in that direction.⁸ This is because corporations, through their activities, affect wider spheres of human activities. Therefore, the result of some corporate activities sometimes constitutes harm to consumers; employees, and the general public as a whole.⁹ Generally, some of these wrongs would have been classified as those giving rise to criminal liability if they were committed by natural persons. Thus, the challenge is whether to hold corporations liable through the machinery of the criminal law or to turn a blind eye and exempt corporations from criminal liability.

5 The mental element of an offence.

6 The physical element of an offence.

7 As held in the case of *Tesco Supermarket Ltd v Nattrass* (1972) AC 153 (HL), particularly the dictum of Lord Denning in *Bolton (Engineering) Co Ltd v Graham & Sons* (1957) 1 QB 159. This decision appeared to have been followed in the Nigerian case of *Nigeria Bank for Commerce and Industry v Integrated Gas (Nig) Ltd* (1999) 8 NWLR (pt 613) 129.

8 Corporations have increased significantly since the promulgation of the Privatisation and Commercialisation Decree No 25 of 1988 later redesigned as "Act" through which the Federal Govern-

2.0 LEGAL EFFECT OF INCORPORATION

A major effect of incorporation as seen in the earlier cited case of *Salomon v. Salomon* is that a company acquires a personality in law distinct from that of its owners. Similarly, Section 37 of the Companies and Allied Matters Act 2004 provides that as from the date of incorporation, the subscribers to the memorandum of the company become a body corporate by the name contained in the memorandum of association of the company, capable of exercising all the powers and functions of an incorporated company. These powers and functions include the power to hold land and have perpetual succession and a common seal. However, the members of the company shall have such liability to contribute to the assets of the company in the event of winding up.¹⁰ By this, the company acquires a legal personality distinct from the subscribers and shareholders of the company.¹¹ Identifying the legal effect of incorporation is important in properly appraising the interrelationship between the effect of incorporation and the imperative of criminalising corporate wrongs. This is because any act of the members of the company in any general meeting, the board of directors or the managing director while carrying on in the usual way of the business of the company is treated as the company itself and the company shall be criminally

10 See Section 37 of the Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004. See also *Marina Nominee Ltd v Federal Board of Inland Revenue* (1986) 2 NWLR (Pt 20) 48.

11 M.A. Olong, "Modern Corporate Responsibility and the Doctrine of Lifting the Veil - A Desideratum" 15 (1) *The Nigerian Law Journal* (2011), pp114.

and civilly liable as if it were a natural person.¹²

3.0 CORPORATE CRIME: A DEFINITIONAL PERSPECTIVE

In defining corporate crime, it becomes necessary to define the word 'crime'. The word 'crime' has been subject of many definitions. This is because law is dynamic and changes with the society; hence what constitutes a crime at a particular time is usually a response to the needs of the society.¹³

According to Curzon, a crime is a state of affairs resulting from harmful human conduct which is prohibited by the state and renders the person perpetuating it liable to stigmatising punishment consequent to a proceeding by the state.¹⁴ Crime has also been explained as illegality different from other illegalities because of the particular administrative procedures which they are subjected to.¹⁵ It was also defined as a legal wrong that can be followed by criminal proceedings which can result in punishment.¹⁶

In the Cyclopaedic Dictionary of law,¹⁷ crime is defined as an act or omission prohibited by public law for the protection

12 Section 65 of the Companies and Allied Matters Act

13 C.M.V. Clarkson, H.M. Keating and S.R. Cunningham, *Criminal Law Text and Materials*, (6th ed. London, Sweet & Maxwell, 2007), pp3.

14 L.B. Curzon, *Criminal Law* (6th ed. London, Pitman Publishing, 1994), pp11-12.

15 This definition is attributed to Sutherland. See G. Slapper and S. Tombs, *Corporate Crime*, UK, Pearson Education Limited, (1999), pp4.

16 G. Williams, *Textbook on Criminal Law* (2nd ed. London, Stevens & Sons, 1983), pp27.

17 Shumaker, Walter A, *The Cyclopedic Dictionary of Law* (Minn St. Paul, Keefe-Davidson Law Book Co, 1901), pp230.

of the public and made punishable by the state in a judicial proceeding in its own name.

Lord Atkin¹⁸ opined that crimes are acts declared by the state at any particular time to be crime and which is capable of punishment. Cross and Jones define crime as a legal wrong for which the offender is liable to be prosecuted in the name of or by the state, and liable to punishment if found guilty.¹⁹ Thus, from all the above definitions, it seems there is no precise definition of crime but the key features of crime are illegality and punishment. Therefore, a crime is any act or omission which has been defined by law as illegal and for which the doer is subject to the stigmatising consequence of punishment.

Generally, there are challenges in applying the definitions of crime to a corporation because a corporation is an artificial person which has been described as one who has no soul to be damned and no body to be kicked.²⁰ In addition, the very idea of corporate crime might seem contradictory because of the fact that a corporation can only be formed for lawful purposes and thus a corporate crime will be ultra vires the powers of a corporation. However, the fact of recognition of the legal personality of a corporation itself is a justification

18 In the case of *Proprietary Articles Trade Association v Att-Gen. for Canada* (1931) AC at 324.

19 R. C. Cross, *Criminal Law* (19th ed. London, Oxford University Press 2010), pp1.

20 Per Baron Thurlow in Poynder, *Literary Extracts* (1844) Vol.1 cited in A. Pinto & M. Evans *Corporate Criminal Liability*, (London, Sweet & Maxwell, 2003), pp15.

for the recognition of corporate crime.²¹ By recognising the legal personality of a corporation, it means the corporation is recognised as a rights and duties bearing entity; so its acts and omission to perform some duties can constitute responsibility for a crime. Thus, corporate crime has been defined as the conduct of a corporation or its employees acting on behalf of a corporation which is prescribed and punishable by law.²² It has also been defined as a deviant behaviour within the context of a corporation and by a corporation.²³

Corporate crimes has also been defined as illegal acts, omissions or commissions by corporate organisations themselves as legal entities or by officials or employees of the corporation acting in accordance with the operative goals or standards, operating procedures and cultural norms of the organisation, intended to benefit the corporations themselves.²⁴

4.0 SHOULD CORPORATE WRONG BE CRIMINALISED?

Generally, there has been arguments against criminalising corporate wrong. This is premised on a number of factors. One factor is hinged on the fact that criminal law was developed

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- 21 K. E. Brickey, „Perspectives on Corporate Criminal Liability (Washington University in St. Louis Legal Studies Research Paper Series No12-01-02 <<http://ssrn.com/abstract=1980346>> (accessed on 29 February, 2012).
 - 22 J. Braithwaite, Corporate Crime in the Pharmaceutical Industry, (London, Routledge and Kegan, 1984), pp6.
 - 23 R Kramer, „Defining the Concept of Crime: A Humanistic Perspective 5 Journal of Sociology and Social Welfare (1985), pp469-487.
 - 24 C. Reasons, „Crime against the Environment: Some Theoretical and Practical Concerns 34Crim.

with the natural person in mind. Therefore, it will be difficult to adapt the criminal law ingredients of *actus reus* and *mens rea* to corporations being artificial entities.

Actus reus is the external element of a crime.²⁵ It means the act or omission that constitutes the crime or the forbidden act. The *actus reus* of every crime is different. In some crimes, it is the physical conduct or act that constitutes the *actus reus*, while in others, it is the omission to do an act.²⁶ With respect to the physical act, the action must be voluntary²⁷ because without the voluntariness, the act itself is defective.²⁸ In order to criminalise a corporate wrong, the corporation must have committed the *actus reus* of the offence. Generally, it is relatively easy to accept that a corporation has the *actus reus* of an offence, especially if the offence is one that requires an omission to perform a duty. In fact, the recognition of legal personality presupposes that it can do certain acts. After all, legal personality is recognition of an entity as capable of bearing rights and liabilities.

Mens rea is the mental element of an offence. It simply means the guilty mind.²⁹ It is the intention that precedes the commission

L.Q (1991), pp86-105. See also R. Kramer, *Corporate Criminality: The Development of an Idea* in E Holchstedler, *Corporate as Criminals*, (Beverly Hills, Sage Publications, 1984).

25 Clarkson and Keating, pp77.

26 Omission to act will apply when the law has placed a duty to act on a person.

27 Voluntariness here is not the same with the intention; rather it explains that the actor is blameless. For example, the act probably occurred as a result of automatism.

28 Clarkson and Keating, pp78.

29 Guilty mind here means legal guilt and not moral guilt. See Yip Chiu-cheng 2 All ER (1994) 924, SHC 78 PC.

of a crime. Words like intention, recklessness and negligence have been described as constituting *mens rea*.³⁰ Blame and responsibility are used to explain the *mens rea*. That is why children and the insane are usually said to lack the *mens rea* to commit an offence.³¹ Unlike the *actus reus*, *mens rea* has proved to be a major challenge to criminalising corporate wrong. This is because a corporation actually has no physical body. It seems difficult, therefore, to attach the mental element necessary for criminal responsibility to it.³² Thus, it has been argued that the corporation, being an artificial entity, is incapable of acting in a morally blameworthy way.³³ Moral responsibility is seen as a condition precedent to applying the criminal sanction. According to Hasnas,³⁴ without the moral blameworthiness, corporations cannot be a proper subject of criminal liability. It is also argued that corporations as abstract entities are incapable of emotions and as such do not deserve sympathy because they are not natural persons and for the same reasons should not be subject of criminal prosecution,³⁵ but that the civil law can adequately regulate corporate activities. However, it is submitted that it is wrong to tie moral responsibility to criminal liability. This is because

30 It is recognised under the Nigerian criminal law jurisprudence as evidenced in the Criminal and Penal Codes and Section 36(12) of the 1999 Constitution (as amended).

31 Clarkson and Keating, pp108.

32 The basic features of criminal law are the *actus reus* and *mens rea* because *actus non facit reum, nisi mens sit rea*. Besides, it can be argued that since a corporation can be liable for civil wrongs requiring *mens rea*, there is no reason why it cannot be liable for criminal offences.

33 J. Hasnas, The Centenary of a Mistake: One Hundred Years of Corporate Criminal Liability <<http://ssrn.com/abstract=1457771> p2> (accessed on 18 February, 2012).

34 J. Hasnas, The Centenary of a Mistake: One Hundred Years of Corporate Criminal Liability <<http://ssrn.com/abstract=1457771> p2> (accessed on 18 February, 2012).7.

crime is different and should not be equated with morality.

In respect of fixing the corporation with a mental element, it is submitted that courts in different jurisdictions have, over time, attempted to determine the corporate *mens rea*. Generally, the move towards criminalising corporate wrong started with the nonfeasance cases involving public and quasi-public entities and which required no *mens rea*.³⁶ Later, there was a shift to include misfeasance cases.³⁷

In *R v Great North of England Rly*,³⁸ the company was indicted for cutting through an existing highway which was contrary to its powers. It was held that a corporation could be liable for a misfeasance. In holding the corporation criminally liable, the court borrowed the doctrine of vicarious liability from law of tort by attributing liability to the corporation for the acts of its natural persons. Similarly, the United States adopted the *respondent superior*³⁹ theory which is a variation of the vicarious liability theory and which literally means 'let the master answer' in the case of *New York Central & Hudson River*

35 P. J. Henning, "Corporate Criminal Liability and the Potential for Rehabilitation" 46 Am. Crim. L. Rev. (2009), pp1418.

36 The courts were holding commercial corporations liable for nonfeasance offences. The first case was that of *R v Birmingham & Gloucester Railway Co Ltd* (1842)2QB 114 ER, 492, where a corporation was convicted for failing to fulfil a statutory duty imposed on it. See also the American case of *People v Corporation of Albany* 11 Wend. 539,539 (N.Y. Sup. Ct.1834). See V.S. Khanna, pp1480.

37 K. O. Akanbi, pp359.

38 (1846) 9 QB at 315.

39 Some authors have argued that the decision in *New York Central's* case was influenced by the need to enforce the statute and because congress had clearly indicated its intent to impose criminal liability on the corporation. See V.S. Khanna pp1483. See also K. F. Brickey, "Corporate

*Railroad Co v United States.*⁴⁰

It was in 1944 that the common law scope of corporate criminal liability was considerably extended⁴¹ to offences requiring mens rea. The courts were probably influenced by the decision in the civil case of *Lennards Carrying Co v Asiatic Petroleum Co Ltd*,⁴² where the House of Lords held that a company being an abstraction can have no mind of its own, but its mind and will can be sought in the person of somebody who is the directing mind and will of the company. Thus, the directing mind theory was used to determine the corporate mens rea. Under this theory, certain categories of officers of the corporation are treated as the alter ego of the corporation. Thus, these officers are not acting on behalf of the corporation but rather as the corporation itself because they are seen as the embodiment of the corporation.⁴³ In the case of *Mr. Ajadi Bakare v. Central Bank of Nigeria*,⁴⁴ in an attempt to serve a court process on the Central Bank of Nigeria, a senior manager of the bank insisted that the process should be served at the head office of the bank and not the branch office where the bailiffs wanted to effect

Criminal Accountability: A Brief History and an Observation 60 WASH. U.L.Q. (1981), pp393-396, 40212 U.S. 418 (1909).

41 The cases of *DPP v Kent & Sussex Contractors* (1944) 1 KB 146, *R v ICR Haulage* (1944) 1 KB 551, *Moore v Bresler* (1944) 2 ALL ER 515 are some of the cases decided, holding corporations criminally liable for offences that require a mental element. For example, *ICR Haulage* case was

42 (1915) AC 705 HL.

43 The directing mind theory has become one of the most popular methods of determining the corporate mens rea and it has been adopted in countries like Australia and Nigeria, albeit in civil cases in Nigeria. See also *Tesco Supermarkets Ltd v Nattrass* (1972) AC 153, *Nigerian Bank for Commerce and Industry v Integrated Gas (Nig) Ltd* (1999) 8 NWLR (pt 613) and *Adeniji v State* (1992) 4 NWLR (pt. 597).

44 (Unreported) Suit No. FHC/IL/CS/24/2009 delivered on the 10 March, 2010, per B. B. Aliyu J.

the service. When the bailiffs of the court insisted on serving at the branch office, they were locked up by the officers of the bank. The court committed the manager for contempt of court.

Aside the challenge of fixing the *actus reus* and *mens rea* to a corporation being an artificial entity, arguments against criminalising corporate wrong has also been based on the doctrine of ultra vires and the procedural difficulty of securing the attendance of an abstract entity in court. However, the idea of corporate crime is not limited to a corporation incorporated in order to achieve an illegal purpose or with an illegal intent. In these types of situation, the corporation can be wound up by the state. Rather, the idea of corporate crime connotes a corporation which is incorporated for a valid and legal purpose but whose conduct during the course of its business results in an illegality. Therefore, the idea of corporate crime is not contradictory to a corporation's incorporation.

Another argument against criminalising corporate wrong is hinged on punishment. This is because punishment is the ultimate goal of the criminal law.⁴⁵ It is believed that the goal of punishment to deter future behaviour cannot apply to corporations.⁴⁶ It is also argued that punishing corporations for the wrong committed by their employees does not advance any of the purposes of punishment.⁴⁷ The critics of criminalising

⁴⁵ L. Ali, *Corporate Criminal Liability in Nigeria* (Lagos, Malthouse Law Books, 2008), pp281.

⁴⁶ P. J. Henning, pp1419-1420.

⁴⁷ J. Hasnas pp 14-17, he went on to analyse the New York Central case and concluded that it was a mistake.

corporate wrong are also of the view that even where a fine is imposed rather than imprisonment, the fine is ultimately borne by the shareholders, who may not be the actual persons responsible for the act.⁴⁸ However, this view is rebuttable. First, criminalising corporate wrong can regulate corporate behaviour and thus prevent future occurrence because the criminal law has a great message sending role as a result of the moral stigma of sanctions.⁴⁹ Secondly, the corporation is not being punished for the wrong committed by its employees; rather, it is being punished for the wrong committed by the corporation itself. Without corporate criminal liability, many crimes would not be sufficiently punished because it may be difficult to allocate responsibility to individuals because of the size and structure of some corporations⁵⁰ and because the corporation is actually the proper liable party.

Another argument against corporate criminal liability is premised on the idea that those who are capable of being prosecuted for traditional common law offences like homicide or rape are the only ones targeted by criminal law⁵¹ and that corporate criminal liability is an interloper. This view appears inaccurate in view of the fact that corporations can now be liable for homicide⁵² and a time may come when corporations

48 A. J. Ikpong, „Corporate Criminality in Nigeria under the Companies and Allied Matters Act 2(1) University of Benin Journal of Private and Property Law (2011), pp 420.

49 V. S. Khanna, pp1492.

50 S. Bajkowski and K. R. Thomson „Corporate Criminal Liability 34 Am. Crim. L. Rev. (1997), p446.

51 P. J. Henning, pp1421.

52 An example is the UK Corporate Manslaughter and Corporate Homicide Act 2007. See also K. O. Akanbi The Legal Framework for Corporate Liability for Homicide: The Experience in Nigeria

will be liable for rape. Corporate wrong should be criminalised because a corporation upon incorporation becomes a part of the society and thus a party to the social contract existing in the society.⁵³ Therefore, the corporation should behave in ways that conform to the accepted norms and standards of the society. The fact of incorporation means that the corporation assumes the individualistic nature of responsibility and thus should be criminally responsible when it commit acts which are criminal in nature. According to Mr. Justice Turner in the preliminary ruling on the

Herald of Free Enterprise case in the UK⁵⁴

Since the nineteenth century there has been a huge increase in the numbers and activities of corporations whether nationalised, municipal or commercial whose activities enter the private lives of all or most of 'men and subjects' in a diversity of ways. A clear case can be made for imputing to such corporations social duties including the duty not to offend all relevant parts of the criminal law.

Also, corporate crimes are usually of such nature that it is difficult, especially in large corporations, to link a particular individual with the corporate crime. Therefore, the corporation is the proper party to hold liable and not the individual

and United Kingdom. *IJUM Law Journal*, IJUM LJ Vol.22 No.1, (2014), pp116-136

53 L. Ali, pp 56-57

54 *R v Alcindor and others, P & O European Ferries (Dover) Ltd* (1991), 93, Cr. App. R. 72 at 82.

members as it is through the criminal law that the society's interest can be vindicated. This is because the civil law only allows individual victims to sue for particular injuries they had suffered; they cannot sue to remedy the harm done to the larger society.⁵⁵ Prosecuting responsible individuals within a corporation can enable the corporation to unfairly distance itself from the offence.⁵⁶

It has also been argued that corporations, because of the resources available to them, are actually able to prevent the commission of an offence if it really wanted to, so it will only be fair to prosecute corporations.⁵⁷ Besides, in large corporations, it might be difficult to identify culpable individuals⁵⁸ especially when the crime committed was a chain of events. Also, the existence of organisational lapses encouraging the commission of an offence is enough reason to justify holding corporations criminally responsible. In addition, since corporations enjoy rights given by the state as a result of being treated as a legal person, it should, in the same vein, be subject of liabilities.⁵⁹ Also, corporations are becoming increasingly powerful and therefore, should not be left unchecked. Should a company which enjoys all the rights of a natural person and more, be

55 K. E. Brickey pp 4.

56 J. Hill „Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique JBL (2003) pp 9.

57 J. Hill „Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique

58J. Clough and C. Mulhem The Prosecution of Corporations (Oxford, Oxford University Press, 2002), pp6.

59A. E. Tashitz „Reciprocity and the Criminal Responsibility of Corporations 41Stetson L. Rev. (2011), pp 73-78.

subjected to all liabilities which a natural person is subjected? Will it not be double standard to equate an artificial person with a natural person only for the conferment of benefit and show a dichotomy when liability is to be imposed?

4.1 Limiting Corporate Criminal Liability to Strict Liability Offences

It might be argued that criminal liability of corporations should be limited to strict liability offences therefore negating the need for the mens rea since as stated earlier, mens rea is the bigger challenge of corporate criminal liability.

Strict liability means liability without mental fault or mens rea. It is the liability that is based solely on the act or omission constituting the actus reus. Generally, on the face of it, the idea of strict liability seems to contradict the basic tenets of the criminal law which as stated earlier is premised on the twin ingredients of actus reus and mens rea. However, the concept of strict liability in criminal law can be traced to the era of industrial revolution and the attendant technological development;⁶⁰ it became pertinent to protect the lives and health of workers and the consuming public. Thus, offences were created to protect the society against risk of harm. It seems then that the likely harm to the public is viewed as a greater evil than any injustice that may be meted to an accused

⁶⁰ Strict liability was originally a civil law concept made popular by the case of *Rylands v. Fletcher* (1868) UKHL 1, LR 3 HL 330 (1868)

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⁶⁰ Strict liability was originally a civil law concept made popular by the case of *Rylands v. Fletcher* (1868) UKHL 1, LR 3 HL 330 (1868).

person who is morally blameless.⁶¹ Hence, the introduction of strict liability offences in criminal law started with public welfare cases and it is still its primary focus.⁶²

Normally, statutes on the face of it do not expressly state that a particular offence is a strict liability offence. Rather, it is left to the construction of the courts to determine whether a statute creates a strict liability offence or not.⁶³ However, courts are normally reluctant to disregard the requirement of mens rea, thus when a statute is silent on the issue of mens rea, the presumption is in favour of *mens rea*.⁶⁴

In the same vein, both the Criminal and Penal Codes presumes the existence of mens rea. Section 22 of the Criminal Code provides that a lack of knowledge that an act or omission is an offence is not an excuse for that offence. Section 24 further provides that a person is not criminally liable for an act or omission which occurs by accident or independent of the exercise of his will but subject to provisions on negligence and omissions. It states further that the result intended to be caused by an act is immaterial unless intention is expressly stated to be an element of an offence. Also, most of the provisions of the Penal Code on criminal responsibility make reference to the

61 The dictum of Kennedy J. in *Hobbs v. Winchester Corporation* (1910) 2 KB 471 CA at 483

62 Frank A. Schubert *Criminal Law The Basics*, Los Angeles, Roxbury Publishing Coy, (2004), pp 119

63 The courts usually consider the words used in a statute, the social context at the time of the commission of the crime and generally, all the circumstances of the case. See *Sweet v. Parsley* (1970) AC 132, (1969) 1 ALL ER 347

64 *Sweet v. Parsley* (1970) AC 132, (1969) 1 ALL ER 347

existence of a mental element or *mens rea*.⁶⁵ However, apart from the Criminal and Penal Codes, there are specific statutes that impose strict liability for violations of its provisions. An example is section 16 of the Economic and Financial Crimes Commission (Establishment) Act.⁶⁶ In *Adeyemo Abiodun & Ors v. I.R.N.*,⁶⁷ a pharmaceutical company manufactured a teething mixture with a toxic substance which killed more than eighty children as at February 2009. The company together with three of its officials were prosecuted and convicted for breach of a statutory offence under the Miscellaneous Offences Act. The company was charged under section 1(18)a (ii) which was a strict liability offence.

It must be stated that most offences of strict liability do not occur in form of positive aggressive acts, rather it occurs more in the form of failure to act where a duty has been imposed. Thus, its violations do not necessarily result in immediate harm to a particular person or property but merely creates a risk of harm which the law seeks to prevent.⁶⁸ Also, most strict liability offences are regulatory offences which are regarded as quasi-crimes and not truly criminal in nature.⁶⁹ Yet corporate wrongs transcend regulatory offences thus there is the need to extend corporate criminal liability beyond strict liability regulatory offences.⁷⁰

65 See Sections 45, 48 and 57 of the Penal Code Law

66 Cap E1, LFN 2004

67 Suit No CA/L/550/M/2013

68 Ibid at 120

69 *Wings v. Ellis* (1985) AC 272 HL

70 Corporations have been held liable for homicide in the United Kingdom. See *R v. Cotsworld Geotechnical Holding Ltd* (2011) ALL ER (D) 100, *R v. Lion Steel Equipment Limited* decided

5.0 CORPORATE CRIMINAL LIABILITY UNDER CAMA

As stated earlier, the fact of incorporation means that a company assumes a legal personality. Thus, the Companies and Allied Matters Act recognises criminal liability of corporation. Section 63 provides thus:

‘A company shall act through its members in general meeting or its board of directors or through officers and agents, appointed by, or under authority derived from, the members in general meeting or the board of directors.’

It provides further in section 65 that actions of the members in general meeting, the managing directors and the board of directors done while carrying out the usual business of the company shall be deemed as the acts of the company and the company shall be civilly and criminally liable for such acts as if it were a natural person. Section 66 also provides that acts of officers and agents of the company will be deemed to be that of the company, if the company, through its members in general meeting, the managing director or through the board of directors had expressly or impliedly authorised the officer and agent to act.⁷¹ In *I.G.P. v. Mandilas & Karaberis & Anor*,⁷²

on 20th July, 2012, see <<http://www.judiciary.gov.uk/media/judgements/2012/r-v-lion-steel-equipment-ltd-sentencing-remarks>> published on 24th July, 2012, (accessed on 15th August, 2013). Similarly, following the Dana plane crash in Lagos in June 2012, there is a corporate manslaughter Bill before the National Assembly in Nigeria.

71 *Adeniji v. State* (1992) 4 N.W.L.R. (Pt. 597)

72 (1958) W.R.N.L.R

the complainant had bought lorries from Mandilas, a limited liability company and when the lorries became faulty, he sent it to the company for repairs. A senior officer of the company acting in his official capacity refused to release the lorries back to the complainant. Both the company and its officer were convicted of stealing, the company's liability apparently as a result of the employee's acts which had been expressly or impliedly authorised.⁷³

From the above provisions of CAMA, there is no question of whose acts or omissions will qualify as the acts of the company or corporation. Thus, it is argued that although every criminal acts or omissions of a company are done by its human elements since the company as an artificial entity can actually do nothing for itself. However, whenever an act or omission is committed or attributed to the personal fault of a director or officer, both the director and officer together of the company will be jointly liable unless the statute expressly state that the liability is for the company alone.

6.0 CONCLUSION

With the continuous growth of corporations and the attendant increase in corporate crimes, it has become imperative to bring the corporation within the ambit of the criminal law.⁷⁴

73 The convictions were however set aside but on the ground that the offence was not proved at the trial court.

74 In fact, there have been International initiatives since the 1950s by the United Nations,

This is because designating an act as criminal is a means of expressing moral judgement about such act. This expressive function of criminal law should be applied to corporations too as part of the society.⁷⁵ Besides, the law is dynamic and changes with the society; it should in fact reflect the mood and exigencies of the times. Therefore, the reality of corporate activities resulting in crimes has shown that corporate criminal liability is now a part of the criminal law.

the Organisation for Economic Cooperation and Development and the Council of Europe recognising corporate criminal liability. An example is 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.

75 P. J. Henning, pp1420.