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Corporate Culture as Means of Proving Mens Rea in Corporate Criminal Liability Under Malaysian Anti-Corruption Law

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ABSTRACT

The fight against corruption is a national and international primary concern for lawmakers and enforcement officials. Corporate criminal liability is an aberration of imputing criminal responsibility on a corporation against a natural person, which requires a combined effect of the actus reus and mens rea. A corporation incapable of committing a crime imputes corporate mens rea through its directors, senior managers or officers that constitute executive powers. In doing so, Malaysia uses the identification doctrine to impute mens rea. This article evaluated the most effective technique of establishing mens rea in dealing with modern corporate criminal responsibility. It used a doctrinal library-based research method to review pertinent corporate criminal liability literature, cases and legislations. The journal articles, cases and legislations were collected and analysed according to the themes to achieve the research objective. It was discovered that Malaysia still uses identification doctrine to prove corporate mens rea, making it difficult and near impossible to find large and multinational corporations liable since the directing mind and will are not actively involved in the corporations' day-to-day operations. However, intention can still be imputed on the corporation based on its corporate culture. Hence, for section 17A of the MACC Act 2009 (2018 amendment) on bribery to be effective, there is a need for a shift from the use of identification doctrine in proving mens rea to corporate culture as that would balance the discrimination and unfairness of the identification doctrine and make it easier for large and multinational corporations to be charged with corporate criminal liability.

Keywords: Corporate criminal liability; large and multinational corporations; mens rea; corruption; corporations; terrorism

INTRODUCTION

Fighting corruption is a national and international concern for government and enforcement officials.[1] As a result, several regional and international treaties provide frameworks for combating bribery, most of which have been integrated into national law and policies.[2] Malaysia is one country that has integrated anti-corruption measures into its legislation through the Malaysian Anti-Corruption Commission Act 2009 ('MACC 2009'),[3] which was recently amended in 2018 to include section 17A. Nevertheless, economic and financial crimes remain a fact of life for businesses in all industries. These crimes include bribery, money laundering, fraud, and similar crimes, all classified as corruption.[4]

It is also possible for all organisations to experience some form of fraud or economic crime. Research in 2018 revealed that 59% of Malaysian respondents had not detected fraud or economic crime yet, which could probably be because there is a likelihood of non-awareness of fraud rather than the actual occurrence of fraud.[5] Academics typically describe corruption as the misuse of public office for personal benefit - an occurrence that can transpire in the civil service.[6] However, others have claimed that corruption is not limited to the civil service but it also happens in corporate companies.[7] This is because corruption occurs in a principal-agent relationship where the agent receives or asks for payment from a third party in exchange for working contrary to the principal's interests.[8] In the MACCA 2009, there is no definition of corruption. Rather gratification is used to describe corruption. Gratification[9] includes an advantage through money, donations, gift, loans and the like that propel services in any capacity, whether in whole or part, a valuable consideration, forbearance, other services or favour, any offer or undertaking to carry out a specific duty. However, corrupt has been defined by the Malaysian Federal Court in *Public Prosecution v Datuk Haji Harun bin Haji Idris,*[10] when it referred to *Lim Kheng Kooi v R.,*[11] that "corrupt" means doing an act knowingly that the act done is wrong, doing with evil feelings and evil intentions, purposely doing an act which the law forbids. Therefore "corrupt" is a question of

intention. If the circumstances show that malicious intent or a guilty mind moved the person who acted or omitted to act, he is liable.

It was argued that corporations cannot assume any responsibility beyond legal and economic concerns; their sole purpose is to maximise profit.[12] As such corporate *mens rea* is an element that is derived from natural persons through the identification doctrine in proving that a corporation is criminally liable. However, this view can no longer hold water in modern society because of the complexities of a corporation in modern times. *Mens rea,* also called "guilty mind", is a particular state of mind concerning causing harm or evil. The phrase suffers from misconceptions.[13] One such misunderstanding arises from the distinct ways the phrase is used, in a broad and a narrow sense. In the broad sense, it is synonymous with a person's blameworthiness, or hose conditions that makes a person's violation sufficiently blameworthy to merit a criminal conviction. This definition includes blameworthiness and mental elements of an offence as well as the available defences such as insanity, immaturity, negligence, duress, etc.[14] The modern meaning of *mens rea* is narrow, describing the state of mind or inattention that, together with the *actus reus* or accompanying conduct, defines an offence in criminal law. Its elements are subsumed in the requisite mental state of the defendant with the element of the offence. Which Child and Hunt called the "present-fault paradigm."[15] However, in this article, the modern definition has been adopted in describing the corporation's *mens rea*. It must be about the elements of the offence and the mental attribution in the offence to ground a conviction.

The identification doctrine has been used to establish *mens rea* in corporate criminal responsibility by impugning the corporation with the guilty mind of the controlling mind and will. Although good in the procedure, in most cases, such a method does not hold large and multinational organisations liable compared to small and medium corporations in the UK's antiquated legal regime. This is because the directing mind and will of these large and multinational corporations are not directly participating in the organisation's daily operations, and decisions of the organisations are often taken by persons lower than the directors, senior managers and officers with executive powers. However, under the Bribery Act 2010, the corporation would be liable for failing to prevent the commission of a crime.[16]

This article aims to determine the most effective method for holding a corporation legally responsible for a criminal offence in the modern day. The study is very important because the identification doctrine has been used to prove corporate *mens rea* in attributing criminal liability to a corporation. However, this method has been variously challenged as problematic, discriminatory and unfair to small and medium corporations because they seem to be the target of criminal liability of corporations. Moreover, it complicates matters for them to use the defence of due diligence in terms of qualified strict criminal liability. This is because the test remains on the corporation's directing mind and will, which is more easily identifiable, leaving large as well as multinational corporations off the hook and able to enjoy the defence of due diligence effortlessly since the directing kind and will are not usually involved in the daily activities of the corporation. As such, the doctrine seems to favour large and multinational corporations. With the recent amendment of the MACCA 2009 (2018 amendment), especially the inclusion of section 17A on bribery, it will be difficult for the court to effectively utilise the provision in finding large and multinational corporations guilty of the offence of corruption because the complexities of those corporations would make it impossible for the identification doctrine to prove *mens rea* necessary to convict the corporation for any criminal offence. As such, there is a need for a better means of determining *mens rea* to ensure that those large and multinational corporations are also held criminally liable for offences committed by them.[17]

This article is divided into five parts. The first is the introduction which has already been discussed. The second part is a brief background of the problem and methodology used in this article. The third section will discuss the doctrine of corporate criminal liability from vicarious liability doctrine to strict liability and identification doctrine; corporate culture in three jurisdictions: the United Kingdom, the United States and Australia. These three jurisdictions were chosen because Malaysia adopted Section 7 of the UK Bribery Act 2010 (UKBA) with little modification. Also, the US are the pioneer in corporate criminal liability, so Malaysia would have a lot to learn from their experience in the case of Australia, Malaysia follow good Australian governance and corporate law, and in their recent amendments, they included Deferred prosecution agreements in corporate criminal liability which

Malaysia can learn. They also have an impressive legal regime on corporate criminal liability. Section four will deal with corporate criminal liability in Malaysia, its use of identification doctrine and the new amendment in the MACCA 2009, define section 17A, and the last section is the recommendation for Malaysia to adopt a corporate culture in proving *mens rea* and conclusion.

BACKGROUND OF THE PROBLEM

Due to the difficulty in establishing corporate responsibility, it is extremely difficult to prosecute a corporation for financial and economic crimes, as proven by various research. As a result, prosecutions are rare and slow to process.[18] The existing legal framework for criminal liability of corporations maintains that a corporation is liable for its employees' criminal acts if they are committed during employment and with at least a partial intent to gain benefit or interest for the company. Thus, the criterion is fulfilled if a crime occurs during the employees' employment and there is a real monetary benefit to the corporation.[19] This is based on the concept of vicarious criminal liability, which emphasises the need for senior management's participation and a corporation's due diligence in preventing employees from committing a crime.[20] However, suppose such conduct occurs infrequently or violates clear and well-enforced corporate regulations by a low-level employee. In that case, it isn't easy to hold the company responsible.[21] Years later, the paradigm shifted to include criminal liability for the actions of subordinates, which provides for lowly employees and, occasionally, private contractors.[22]

Before the 2018 MACCA 2009 amendment and inclusion of section 17A, domestic legislation in Malaysia had provisions for corporate criminal liability, such as section 138 (3) of the Securities Commission Act 1993,[23] Which stipulates that if an employee of a body corporate violates an Act provision, the body corporate is regarded to have incurred the violation. Also, section 144 of the Consumer Protection Act 1999[24] provides that the principal is presumed to have committed the offence until the contrary is established when an employee, agent, or employee of the agent of the principal commits an offence under the Act. It also includes the Communications and Multimedia Act 1998,[25] which provides evidence of the corporation's vicarious liability. Over the years, more progressive laws were passed to combat corruption in the public and private sectors, covering extensive corruption in its multiple forms[26]. As a result, the MACCA 2009 Amendment Act 2018 is the primary legislation in Malaysia aimed at combating corruption in all its forms. The primary objective of the Malaysian government's corporate liability provision is to foster a corruption-free culture for companies and commercial ventures and encourage corporate organisations to take appropriate steps to avoid corruption.[27] Corporate criminal liability under criminal law aims to convict and rebuke corporations for the wrongdoings of natural persons.[28] However, the concept has proven problematic and challenging in proving the requisite *mens rea*. As such, courts tend to ignore imprisonment in favour of a fine. In *Dunlop Malaysian Industries Bhd v Public Prosecutor,*[29] the court of appeals reversed the factory manager's conviction, holding that a company may only be tried for an offence punishable only by fines. However, in *Standard Chartered Bank v. Directorate of Enforcement,*[30] The court recognised that a company might be charged with an offence that carries a mandatory fine and imprisonment. This is because committing a crime necessitates the cooperation of the criminal act – actus reus – and the guilty mind – *mens rea*. Nevertheless, if the defendant is a corporation, establishing such runs counter to the company's *mens rea* requirement since the corporation is stated to be "unable to perform the acts or form the intent which is prerequisite for criminal liability."[31] This is because a corporation has no soul or physical existence to possess the requisite *mens rea* and *actus reus* needed for the commission of a crime.[32] It can only act through human agents, usually regarded as the company's "directing mind and will". Hence in the case of *Kumpulan Wang Persaraan (Inc) v Meridian Asset Management Sdn Bhd,*[33] *the* vicarious liability principle was applied to hold the company liable for the criminal acts of the employees where the employee acts within the company's control and authority. However, in a more recent case of *Yue Chi Kin v PP*[34]*,* the accused (appellant) was charged with the offence of abetting another who had knowingly permitted the making of a misleading statement to the stock exchange; the court read Section 122B(b)(bb) together with Section 122(c) of the Securities Industries Act 1983 to hold the company liable. Adding that the guilty mind or knowledge of the company must refer to the directors or managers of a corporation as they are the directing mind and will of the company, without which a corporation could not be said to have committed an offence.

In Malaysia, the courts employ identification theory to prove mens rea in all criminal offences, including those that affect corporations and corporate criminal liability cases. However, in the case of corporate homicide, Malaysia does not hold corporations liable for such offences.[35] This procedure has been argued inadequate for multinational organisations with different branches and subsidiaries as decisions are being decentralised to below the level of directors, making identification doctrine inadequate and inappropriate. This is because only small organisations can be effectively prosecuted with identification doctrine leaving multinational organisations immune to criminal prosecutions in criminal liability of the corporation. Hence, fostering a corporate culture in proving mens rea ensures that those multinational organisations cannot escape criminal liability for crimes committed by low–level staff.

CONCEPT OF CRIMINAL LIABILITY

The criminal liability of corporate organisations is not a characteristic that all modern legal systems incorporate. Corporate criminal liability is a court-created concept that extends back to the early 1900s in the case of *New York Central & Hudson River Railroad Company v. United States,*[36] where the Supreme Court ruled that corporate organisations may be held responsible for their employees' illegal conduct. With various interpretations of the same case, courts began to impute corporate criminal liability on the corporation. This means that a corporate organisation may be held criminally responsible for the actions of a single low–level employee, even if they violated corporate policy.[37]

Criminal liability was created under the premise that a corporation is not immune to prosecution since the type of offence committed by the corporation can only be committed by a natural person. As such, its officials' *mens rea* is imputed to it.[38]

VICARIOUS LIABILITY

The requirements of vicarious liability differ from jurisdiction to jurisdiction. However, the basic components are that a company representative has committed an offence, performs the offence while working within the extent of his job, and commits the crime to profit the corporation. Where those elements exist, vicarious liability has been established. This method of criminal liability dates back to the early 1900s. Even though a company cannot be held liable for the illegal conduct of its subordinate workers or agents in general, there are several exemptions. The most serious are statutory violations imposing an absolute responsibility on the employer. Even if the conduct was not approved or consented to by the employer, the corporation should be imputed with *mens rea* and held liable for such a criminal act.[39]

STRICT LIABILITY PRINCIPLE

Absolute liability crimes are those in which the conduct itself is sufficient to determine culpability independent of the offender's state of mind, as demonstrated by section 7 UKBA 2010, which defines the crime of 'failure to prevent bribe'. It makes no difference whether upper management is unaware of the bribing conduct. What is important is that an officer in that corporation committed the act of bribery.[40] In this case, the directing mind and will are insignificant in attributing culpability to the corporation. Because no proof of *mens rea* is required, a company can commit the strict liability offence; as a result, proving the corporation's blameworthiness is straightforward.[41] Since 1948, Malaysian courts have recognised corporation criminal responsibility under the doctrine of strict liability. One such case is the case of *Public Prosecutor v Ginder Singh & Chet Singh,*[42] where the company was held liable for overloading contrary to the Motor Vehicles Commercial (Amendment) Regulations 1948, an act performed by a company's employee without the owner's consent. Therefore, since the element of *mens rea* is not needed in strict liability offences, proof that the employer was unaware or had no awareness of the employee's unlawful behaviour cannot invoke it. Therefore, proving the lack of *mens rea* is immaterial because the corporation must suffer criminal liability for that act.[43]

IDENTIFICATION DOCTRINE

It states that to convict a corporation of a criminal offence, it must be proved that someone with the corporation's "directing mind and will" was engaged in performing the crime. As a result, prosecuting huge corporations becomes more challenging, as it requires proof that a rather high executive was engaged in criminal activity.[44] This is caused by establishing criminal liability for a company often requires evidence that the firm's most senior officers participated in or were aware of illicit behaviour, making it nearly impossible when it involves

large multinational organisations. This is because decision-making is often decentralised and taken below the level of the Board of Directors, and hence the corporation is shielded from criminal liability. As a result, only small businesses with uncomplicated corporate make-ups are more vulnerable to being affected, creating an inequitable scenario. This is an unproductive and inefficient technique for proving corporate criminal responsibility. The identification doctrine is the first technique the United Kingdom uses to determine a corporation's corporate criminal liability. Subject to limited exceptions, a corporation's liability is determined in offences requiring mental elements, such as corruption and bribery. The combined effects of the *mens rea* and *actus reus* are determined through the corporation's representative or employee person is not an element of the controlling mind in the case of *actus reus* but is the controlling mind in the event of *mens rea.*[45]

CORPORATE CULTURE

The term "corporate culture" means 'an attitude, policy, and rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate where the relevant activities take place'[46]. Corporate culture encompasses the formal aspects of the organisation, such as the organisation's policies and procedures, as well as the organisation's informal attitudes, practices or unwritten rules.[47] A healthy company culture entails the availability of compliance procedures, staff education and training initiatives, employee communication mechanisms, and perhaps a whistleblowing mechanism.[48] Corporate culture has previously been characterised as the common assumptions, values, and beliefs that shape employee conduct in the face of inadequate contracts.[49] It has been stated that ethics are deteriorating globally.[50] Unscrupulous business behaviour is one of the most serious in terms of possible negative consequences and one of the most challenging to handle effectively. Corruption, favouritism, bribery, money laundering, receiving and giving gifts and entertainment, extortion, kickbacks, nepotism, intermediaries, improper use of insider information, conflict of interest, sexual harassment, discrimination, workplace safety, environmental pollution and consumer product safety are all examples of unethical behaviour.[51] Thus, establishing an ethical corporate culture of a company is required to limit unlawful or unethical behaviour. Even so, an ethical corporate culture not only helps avoid significant unlawful or unethical corporate scandals that result in criminal responsibility for the corporation but also encourages more suitable ethical conduct at all levels, avoiding criminal liability in future.[52] It has been stated that culture significantly impacts the regulatory environment, influencing an organisation's corporate governance.[53] As such, national culture significantly impacts corporate governance[54], so one would say that corporate culture stems from corporate governance influenced by a nation's culture. A corporation's corruption culture has been argued to be an important determinant of its likelihood of engaging in corporate misconduct leading to criminal liability.[55] The model of corporate culture can be said to be a shift from imputing corporate *mens rea* on the individual to *mens rea* on the corporation as a whole unless it can be proven that the corporation has put in place adequate procedures. This is because a corporation can still be liable even if it is impossible to identify the human culprit or perpetrator. Thus, for a corporation to exonerate itself from criminal liability, adequate compliance culture must be in place to protect it against the violations of legislation and help mitigate liability in case of bribery.[56] Corporate culture is broad and wider than the concept of lifting the corporate veil. Because it serves as both a deterrence and defence where a criminal act has been committed. It is also a part of adequate procedure under Section 17A MACCA 2009.[57] But lifting the veil only applies where an offence has already been committed.

UNITED STATES

In the United States, vicarious criminal liability was formed following the seminal case of *New York Central*.[58] According to federal law, an employee must operate within the scope of his work for the corporation to be vicariously liable.[59] The corporation must have benefited from the transaction no matter how minute.[60] As a result, courts have been inclined to hold businesses criminally accountable for activities done by low-level workers regardless of whether a corporate compliance programme is real and competent. The corporation would still be liable if an employee or agent acts contrary to the company's policy. Under section 2.07 (1) (a) – (c) of the US Model Penal Code (MPC), for offences involving *mens rea*, a company may be criminally responsible if the Board of Directors of top management agents operating on behalf of a company within the extent of his job has approved, asked, directed, performed, or willfully condoned

the agent's illegal conduct.[61] The courts in the US, just like other jurisdictions, use the identification doctrine even though indirectly to impute criminal liability on the corporation to the directing mind and will of the company, forgetting that businesses frequently evade criminal culpability as a result of the intricacies of contemporary corporations, where decisions are made per company rules and processes rather than individual human judgments.[62] Hence, the vicarious liability doctrine could encourage directors to protect their businesses from criminal culpability by distancing themselves from their workers and lower-level management.[63] This makes large and multinational corporations difficult to prosecute. The courts began attributing *mens rea* beyond the identification doctrine to illegal acts committed by workers who are not the corporation's controlling mind and will under the strict criminal culpability concept.[64] In the United States, corporate culture considerations play a significant role in prosecutorial discretion in imputing mens rea on corporations and sentencing as against organisational liability.[65] As with Australia, the United States has criminal law at both the state and federal levels, and corporations are liable based on respondent superior or vicarious culpability. However, given the relatively straightforward federal approach to corporate criminal culpability, the United States has moved farther than Australia in adopting sentencing regimes tailored to corporate defendants regarding corporate culture concerns.[66]

UNITED KINGDOM

The United Kingdom has, since the 1940s, dealt with corporate criminal liability based on identification doctrine[67]. As such, the identification doctrine remained the cornerstone of corporate criminal liability[68] until the recent UKBA 2010 established corporate accountability for bribery. Section 6 & 7 of the UKBA 2010 makes it illegal for a commercial company to bribe a foreign public official to gain or maintain business or a benefit in doing business, regardless of whether an employee of the firm performs the act.[69] Though stringent in terms of penalties, by section 7(2) UKBA 2010, the commercial organisation has been availed a defence if it can prove it had 'adequate procedure' designed to prevent persons associated with it from committing the bribery offence. The Act has been described as extraterritorial in terms of corporate criminal liability as such a commercial organisation cannot get immunity in other jurisdictions where it has subsidiaries.[70] The UKBA 2010 is argued to be a piece of legislation that has effectively improved corporate behaviour. Adopting section 7, 'failure to prevent' offence, has been essential in incentivising corporate governance development and allowing prosecutors to hold corporations accountable within a criminal law framework. Maintaining the firm accountable for its failure to prevent bribery requires the Board to prioritise and focus on training, processes, and cultural change to prevent workers from committing bribery.[71] This way, the anti-bribery message has been passed effectively to employees, thereby reducing the bribery risk to the corporation. However, It has been argued that the UKBA 2010 has successfully brought about important and wide-ranging changes in behaviour without the need for extensive prosecutions of UK businesses with the 'threat of prosecution'. However, despite its successes, the UKBA 2010 has been criticised since its inception in 2007. There have been relatively few prosecutions/DPA brought under it because it is deemed ineffective.

AUSTRALIA

Australia is a federal state and, as such, has legislative powers for certain specified matters. Initially, courts depended on the vicarious liability concepts but have primarily adopted the identification doctrine approach since its inception in the United Kingdom in the 1940s.[72] However, the most notable feature of Australia's corporate criminal liability law is the statutory provisions that establish organisational culpability for federal offences, particularly those motivated by corporate culture. These provisions provide the world's most complex model of corporate criminal responsibility.[73] Despite having an organised and standard model of organisational liability, Australia, unlike the US, has not evolved equivalent systematic sentencing standards to address organisational culpability.[74] Collective knowledge may be attributed to a company in Australia in proving *mens rea* through identification theory, depending on the circumstances of each case.[75] Despite being the best in the world, the Australian provision on organisational liability is saddled with the difficulty of establishing clarity. For a corporation to be liable, it must first be necessary to establish that an individual has committed an offence.[76] When it is impossible to prosecute an individual due to a lack of identification or because

the subject is out of jurisdiction, the court would be in a dilemma in imputing *mens rea* on the corporation to make it liable.

CORPORATE CRIMINAL LIABILITY IN MALAYSIA

Corporate criminal culpability is predicated on the assumption that a business is not immune from prosecution simply because the nature of the offence committed requires a natural person to commit it. As a result, courts are willing to hold corporations criminally accountable for the crimes committed by their officials by imputing the essential *mens rea* to the corporation. The concept of criminal liability of corporations in Malaysia stems from the fact that, as a common law country, it had to adopt the identification and the vicarious liability doctrine to prosecute corporate crime.[77] Legal personality was attributed to a corporation in the celebrated case of *Salomon v A Salomon & Co Ltd.*[78] However, when the notion of corporate criminal culpability was introduced, it was assumed that a company could not be held accountable since it was a distinct legal entity. A corporation was equally held not to maintain a guilty mind even though this traditional view had been debated. However, when the doctrine of vicarious liability was developed, a corporation became criminally liable for the acts of its agent carried out within the scope of its employment. With the identification doctrine, a corporation's *actus reus* and *mens rea* were ascribed to the guiding mind and will of its directors, top managers, or officials with executive powers.[79] This is because the corporation is said not to have a body and a soul.[80] In the courts in *DPP v Kent and Sussex Contractor Ltd,*[81] a different position was adopted wherein the court held that the corporation is held accountable directly or indirectly for offences in its capacity without any need to prove any agency relationship or master-servant relation and even in the absence of a statutory provision to that effect. Hence, using the identification theory, the court in *Zurich Insurance Malaysia Bhd v AM Trustee Bhd & Anor; Meridian Asset Management Sdn Bhd (Third Party) and Anor,*[82] the corporation was held liable for the crime and negligence of its employee despite its lack of knowledge.

IDENTIFICATION DOCTRINE IN MALAYSIA

According to this doctrine, those identified as the directing mind and will of a corporation, or the *mens rea* of a natural person, are said to be the corporation's alter ego and shall be deemed the *mens rea* of the corporation.[83] It was applied in the landmark case of *Tesco Supermarkets Ltd v Nattrass,*[84] Malaysia adopted the doctrine in *Yue Sang Cheong Sdn Bhd v Public Prosecutor;*[85] where the Federal court determined that a corporation may be responsible for the crime requiring proof of *mens rea* and that the corporation can be ascribed with the knowledge of a natural person.[86] In contrast to other countries, Malaysian courts took a far more formal approach to the identification doctrine, establishing the guiding mind and will through the corporation's official records, which includes directors and persons with executive powers as appointed in the memorandum and articles of the corporations.[87]

The identification doctrine applied by Malaysia is consistent with other jurisdictions like the United Kingdom and Canada.[88] Since the identification doctrine considers whether a person involved in the offence is a director, senior manager, or official with executive powers to impute liability on the corporation, one could no doubt conclude that it is easier to find small and medium-sized corporations liable because it is not difficult to determine who the directors, senior managers and officers with executive powers are. However, when it comes to large or multinational corporations which have a more complex hierarchy and organisational structure, it is difficult and near impossible to establish who the directing mind and will of the corporation are because persons performing corporate activities and pursuing business goals are often not the directors, senior managers or officers with executive powers. As such, this means of proving *mens rea* is said to be discriminatory and unfair to small and medium-sized corporations.[89] Furthermore, it is difficult for small and medium corporations seeking to establish a defence under qualified strict criminal culpability must show that it took all reasonable means to prevent an employee from committing the offence, as ruled in the cases of *R v Chargot Limited (t/a Contract Services) and others*[90] and *Pendakwa Raya v Intrakota Consolidated Bhd.*[91] Still, for large and multinational organisations, it is easy for it to establish due diligence in such circumstances because the directing mind and will are detached from the daily operations of the business since the Holden of the House of Lords' decision is that for a corporation to rely on the due diligence defence, it must establish that such care was exercised by people considered as the corporation's controlling mind and will.[92] Another unfair situation can

only be solved if small companies can maintain a comprehensive corporate culture.

NEW IMPROVEMENTS IN MACCA 2009 (2018 AMENDMENT) UNDER SECTION 17A

Parliament enacted the Malaysian Anti-Corruption Commission Act 2009 and the Amendment Act 2018 (MACCA) in April 2018. It provides corporate liability for bribery under section 17A. This provision stipulates that a commercial organisation is presumed to have committed an offence if any individual linked with the organisation commits an offence to obtain any gratification or retain any business or advantage for the organisation. Under the amendment, the corporation, its shareholders, directors and senior managers would be held accountable for its offences. On conviction, a fine of not less than ten times the value or amount of the bribe or one million Ringgit or a sentence to imprisonment not exceeding 20 years is imposed. A provision for the defence was included where the corporation, its directors or senior managers can establish that the crime was undertaken without their permission or connivance or that they took reasonable precautions to avoid the offence from being committed.[93]

The development of laws in Malaysia on corporate criminal liability is similar to other jurisdictions, such as US Foreign Corrupt Practice (FCPA) and UKBA 2010. It established a major change in the corporate structure of Malaysia, with directors and top management officers potentially being made accountable for corporate crimes notwithstanding the absence of *mens rea* or involvement in the commission of the offence. The corporation's defence is to demonstrate that it set effective processes to prevent such accidents that are reasonable and proportionate to the company's size and scope and that they were properly executed. The minister's guideline called TRUST has been launched to assist corporations in identifying what adequate procedure is required. The guideline was introduced according to Section 17A MACCA 2009. To help commercial organisations understand the adequate procedures that should be implemented to prevent the occurrence of corrupt practices with business activities. However, whether these adequate procedures are "adequate" is a research subject because the guideline is not comprehensive.

THE NEED TO ADOPT CORPORATE CULTURE

Corporate culture could be viewed as an alternative to a corporation's internal decision structure, which gives rise to moral blameworthiness and corporate *mens rea*. Employees in large and multinational corporations depend on their directors and top executives, who are frequently involved in establishing the corporation's policy and procedures and determining what should be done in terms of legal compliance. Thus, a legal principle that examines the culture can recognise this aspect and address the discrimination and unfairness of the identification doctrine.[94] Therefore, corporate culture plays a considerably significant role in large and multinational organisations compared to small and medium corporations. This is because, looking at the complexity of the corporation, directors and senior officers are often not directly involved in the daily running of the corporation. Still, their demeanour, tolerance, and attitudes send a strong signal throughout the corporation. For instance, in Australia, the passing of the Criminal Code Act 1995, especially section 12 3(2)(c) and (d),[95] encouraged large and multinational corporations to lay more emphasis on a strong corporate culture which would put in place policies or procedures that prevent non-compliance and illegal activities under greater scrutiny throughout the company and hence make it effective. Therefore, where it can be proven that a corporate culture tolerates or creates an incentive for employees to breach the law for the sake of pursuing the corporation's decisions and goals,[96] corporate *mens rea* could be said to have been established, and the corporation would be liable for such a criminal act. This is because a lack of knowledge or involvement by directors or senior managers is immaterial and would not exonerate it from criminal liability as a defence. This would amount to proof of corporate *mens rea* because the commission of the offence would be treated as a lack of a strong corporate culture to ensure compliance with legal requirements throughout the organisation. It has also been argued that the identification doctrine imposes severe limitations on the scope of corporate liability. As such, any attempt to prosecute by the prosecutor would fail because the doctrine works best in small and medium corporations with fewer shareholders/controllers.[97] Consequently, if Malaysia reverses to corporate culture in proving *mens rea* in corporate criminal liability, the discrimination and unfairness of the identification doctrine on small and medium

corporations will be addressed. It would also be easier for her to find large and multinational corporations liable for bribery under section 17A of the MACCA 2009, as amended in 2018. More so, the essence of the amendment is deterrence rather than retribution, especially with the inclusion of a fine as punishment for bribery.

CONCLUSION

Corporate criminal liability is a concept that has been developed since the 1900s and evolved through various changes from vicarious liability to strict liability offences with the use of identification doctrine by most jurisdictions in determining *mens rea* for criminal liability to be imputed on a corporation. However, it was later discovered that the identification doctrine, which effectively implies that a governing mind must be established to have sanctioned the illegal act, continues to be the most significant impediment to prosecuting huge and international complex organisations. This is attributed to the fact that they are detached from the daily running of the corporation, leaving small and medium corporations whose directing mind and will be easily ascertainable at the receiving end.[98] Hence the proof of *mens rea* attributed to the corporation is on the directors and senior managers or officers with executive powers. To cure this anomaly, which made large and multinational complex corporations easily escape liability and enjoy the defence of due diligence by not being directly involved in the corporation's operations, the corporate culture was developed, which is a strict means of proving *mens rea*. This is because, with the exception that the corporation can demonstrate that it has implemented reasonable safeguards to avoid the commission of the offence, the mere fact that the offence was committed by a person associated with it would make the person criminally liable for the act of bribery or such offences that require *mens rea*.

Malaysia had recently amended its MACCA 2009 by including section 17A on bribery but still uses the identification doctrine in determining culpability by attributing *mens rea* to the directing mind and will of the corporation. As such, to effectively enforce the provision to affect large and multinational complex organizations that have committed bribery, there is a need for a shift from the identification doctrine to the use of corporate culture to prove *mens rea* in determining culpability in corporate criminal liability as obtainable in the three jurisdictions' practices discussed in this article.

NOTES

1 Nur Hazirah Zainudin & Wan Mohd Zulhafiz Wan Zahari, 'Whistleblowing: A western and Shari'ah Perspective', (2018) 26(1) *IIUM Law Journal*, p 99, https: //doi.org/10.31436/iiumlj.v26i1.362.

2 B. Mayer, T.V. Roomen & E. Sikkema, 'Corporate criminal liability for corruption offences and the due diligence defence. A comparism of the Dutch and English legal framework', (2014) 10(3) *Utrech Law Review,* p 37. https: //doi.org/10.18352/ulr.283.

3 Act 694.

4 Rusni Hassan & Aishath Muneeza, 'The need to eliminate mismanagement and corruption in Islamic social finance institutions', (2022) 30(S2) *IIUM Law Journal,* p 423-444, https: //doi.org/10.31436/iiumlj.v30iS2.774.

5 'Global Economic Crime and Fraud Survey: Malaysian Report', *PwC*, 2018, https: //www.pwc.com/my.

6 J. Gutmann & V. Lucas, 'Private – Sector Corruption: Measurement and Cultural Origins', (2018) 138 *Soc Indic Res*, p 747 – 770, https: //doi.org/10.1007/s11205-017-1684-3.

7 'Helping Countries Combat Corruption: The Role of the World Bank', World *Bank,* 1997, https: //www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf.

8 'Bribe payers index 2011', Transparency International, November 2, 2011, https: //www.transparency.org/en/publications/bribe-payers-index-2011.

9 Section 3 MACCA 2009.

10 (No. 2) [1997] 1MLJ at page 22.

11 [1957] MLJ at page 199.

12 M. Friedman, 'The social responsibility of business is to increase its profits', *The New York Times Magazine*, September 13, 1970, 17.

13 P.H. Robinson, 'Mens Rea', (1999) *Nelico Legal Scholarly Repository,* p 8-19.

14 F. Stark, 'It's only words: Meaning and mens rea', (2013) 72(1) *Cambridge University Press,* p 155-177, https: //doi.org/10.1017/S0008197313000056.

15 J.J. Child & A. Hunt, 'Beyond the present-fault paradigm: Expanding mens rea definitions in the general part', (2022) 42(2) *Oxford Journal of Legal Studies,* p 438-467, https: //doi.org/10.1093/ojls/gqab033.

16 'Corporate Criminal Liability', *Spotlight on Corruption*, May 1, 2023, http: //spotlightcorruption.org/better-laws/corporate-liability/.

17 K.O. Akanbi, 'The legal framework for corporate liability for homicide: The experience in Nigeria and the United Kingdom', (2014) 22(1) *IIUM Law Journal*, p 115-136, https: //doi.org/10.31436/iiumlj.v22i1.118.

18 R.D. Teka & R. Donaldson, 'Corporate liability for economic crime: Submission from Transparency International UK', Transparency International UK, 2017, https: //www.transparency.org.uk/.

19 A. Weissmann, R. Zeigler, L. Mcloughlin & J. Mcfadden, 'Reforming corporate criminal liability to promote responsible corporate behavior', The US Chamber Institute for Legal Reform, 2008, http: //www.instituteforlegalreform.com/uploads/sites/1/WeissmannPaper.pdf

20 In re Helenic, Inc., (5th Cir. 2001) 252 F. 3d 395.

21 G.E. Lynch, 'The role of criminal law in policing corporate misconduct', (1997) 60 *Law & Contemp. Probs*, p 23-39, https: //doi.org/10.2307/1192003.

22 United States v. Automated Med. Labs., Inc., (1985) 770 F. 2d 399.
23 Securities Commission Act 1993 (Act 498).
24 Consumer Protection Act 1999 (Act 599).
25 Section 244 Malaysia Communication and Multimedia Act, 1998 (Act 588) (MCMA 1998).
26 M.F. Mendelsohn (ed)., *The Anti-Bribery and Anti-Corruption Review*, 7th edn, Law Business Research Ltd, London, 2018, p 218.
27 E. Oh, 'New bribery legislation arrives in Malaysia', *ACCA Think ahead*, January 2, 2019, https: //www.accaglobal.com/in/en/member/member/accounting-business/2019/02/insights/bribery-legislation.html.
28 S. Yeo, N. Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, 2nd edn., Lexis Nexis, Kuala Lumpur, 2002, p 1017.29 (1985) 1 MLJ 313.
30 (2005) 4SCC 530.
31 S. Yeo et al, *Criminal Law in Malaysia and Singapore*, p 1018.
32 Hasani Mohd Ali, 'Corporate Killing for Malaysia: A Preliminary Consideration', (2009) 13 *JUUM*, p 145 – 157.
33 [2012] 1 LNS 316.
34 [2019] 1 LNS 1874.
35 Ibid.
36 (1909) 212 U. S. 481.
37 Unites States v. Blood (6th Cir. 2001) 435 F. 3d 612.
38 Nur Yusliana Yusoff & Rusni Hassan, 'Corporate criminal liability in Islamic Banks in Malaysia', (2022) 14(2) *IJLF,* p 363-375, https: //doi.org/10.1108/IJLF-04-2021-0067.
39 Rini Agarwal, 'Corporate liability: UK Bribery Act – Legal Overview', STA Law Firm, July 3, 2016, https: //www.stalawfirm.com/en/blogs/view/corporate-liability-uk-bribery-act.html.
40 F. Eriksson, M. Kirya & M. Stridsman, 'OECD Public Consultation on Liability of Legal Persons Submission by U4 Anti-corruption Resource Centre', 2014, http: //www.u4.no and the case of Serious Fraud Office (SFO) v Standard Bank PLC case No: U20150845, https: //www.judiciary.gov.uk/wp-content/uploads/2015/11/sfo-v-standard-bank_preliminary_1.pdf.
41 O. David, *Smith and Hogan's Criminal Law*, 13th edn., Oxford University Press, New York, p 258.
42 (1948) 1 MLJ 194b.
43 K.W. Simons, 'Can strict criminal liability for responsible corporate officer be justified by the duty to use extraordinary care?' (2017) 12 *Crim Law and Philos*, p 439, https: //doi.org/10.1007/s11572-017-9431-z.
44 R.D. Teka & R. Donaldson, 'Corporate liability for economic crime: Submission from Transparency International UK'.
45 Rini Agarwal, 'Corporate liability: UK Bribery Act – Legal Overview'.
46 A.A. Robinson, ''Corporate culture' as a basis for the criminal liability of corporations', United Nations Special Representatives of the Secretary – General on Human Rights and Business, Business & Human Rights Resource Centre, 2008.
47 J. Hill, 'Corporate criminal liability in Australia: An evolving corporate governance technique?' (2011) 1(1) *Journal of Business Law* 1, p 10, https: //www.doi.org/10.2139/ssrn.429220.
48 M. Ramirez, 'The science fiction of corporate criminal liability: Containing the machine through the corporate death penalty', (2005) 47 *Arizona Law Review,* p 940.
49 J. Pacelli, 'Corporate culture and analyst catering', (2019) 67 *Journal of Accounting and Economics*, p 120-143, https: //doi.org/10.1016/j.jacceco.2018.08.017.
50 V. Wyk & B. Weiss, 'Validity of the Corporate Ethical Virtue (CEV) Model in a South African study context: A case study', (2019) 13(1) *African Journal of Business Ethic*, p 12-36, https: //doi.org/10.15249/13-1-203.
51 'Organizations Receiving Fines or Restitution', Sourcebook for Federal Sentencing Statistics, U.S Sentencing Commission, 2010, https: //www.ussc.gov/dara_and_statistics/Annual_Reports_and_Sourcebooks/2010/Table51.pdf.
52 M.S. Schwartz, 'Developing and sustaining an ethical corporate culture: The core elements', (2013) 56 *Business Horizon*, p 39-50, https: //dx.doi.org/10.1016/j.bushor.2012.09.002.
53 N. Osemeke &L. Osemeke, 'The effect of culture on corporate governance practices in Nigeria', (2017) 14(4) *International Journal of Disclosure and Governance*, p 318-340, https: //doi.org/10.1057/s41310-017-0028-5.
54 J. Li & J.R. Harrison, 'Corporate governance and national culture: A multi-country study', (2008) 8(5) *Corporate Governance*, p 607 – 621, https: //doi.org/10.1108/14720700810913278.
55 Liu Xiaoding, 'Corruption culture and corporate misconduct', (2019) 122(2) *Journal of Financial Economics*, p 307-327, https: //doi.org/10.1016/j.jfineco.2016.06.005.
56 Qingxiu Bu, 'The culture variable vis – a – vis anti-bribery law: A grey area in transnational corporate criminal liability', (2018) 19 *Eur Bus Org Law Rev*, p 183-213, https: //doi.org/10.1007/s40804-017-0089-8.
57 Section 17A (4) & (5).
58 United States v Richmond (8th Cir 1993) 700 F 2d 1183.
59 United States v Cincotta (1st Cir 1982) 689 F 2d 238 at 241.
60 V. Nanda, 'Corporate criminal liability in the United States: Is a new approach warranted?' in M. Pieth & R. Ivory, *Corporate Criminal Liability,* Springer, London, p 62.
61 K. Wong, Breaking the cycle: The development of corporate criminal liability, LLB Diss., University of Otago, 2012.
62 R. Sarre, 'White-collar crime and prosecution for 'industrial manslaughter' as a means to reduce workplace deaths', in H.N. Pontell & G. Geis, *International Handbook of White-collar and Corporate Crime*, Springer, New York, 2007, p 649.
63 J. Gobert, 'Corporate criminal liability: Four models of fault', (1994) 14 *Legal Stud,* p 401, https://doi.org/10.1111/j.1748-121X.1994.tb00510.x.
64 United States v Bank of New England (1st Cir. 1987) 820 F 2d 844 at 846 and R v P & O European Ferries (Dover) Ltd (1991) 93 Cr App R 72.
65 A.A. Robinson, ''Corporate culture' as a basis for the criminal liability of corporations'.
66 P.J. Henning, 'The organizational guidelines: R. I. P?' (2007) 116 (Pocket Part) *Yale L.J.*, p 312.
67 Meridian Global Funds Management Asia Ltd v Security Commission (1995) 2 AC 500.

[68] A.A. Robinson, ''Corporate culture' as a basis for the criminal liability of corporations'.

[69] C. Rose, 'The UK Bribery Act 2010 and accompanying guidance: Belated implementation of the OECD Anti-bribery Convention', (2016) 16 *International and Comparative Law Quarterly,* p 485-499, https: //doi.org/10.1017/S002058931200036.

[70] G. LeBaron & A. Ruhmkorf, 'Steering CSR through Home State Regulation: A comparison of the impact of the UK Bribery Act and Modern Slavery Act on global supply chain governance', (2017) 8(3) *Global Policy,* p 15-28, https: //doi.org.10.1111/1758-5899.12398.

[71] R.D. Teka & R. Donaldson, 'Corporate liability for economic crime: Submission from Transparency International UK'.

[72] Section 4 of the Trade Practices Act 1974 (Cth) (TPA).

[73] J. Clough & C. Mulhern, *The Prosecution of Corporations,* Oxford University Press, South Melbourne, Vic., 2002, p 138.

[74] A.A. Robinson, ''Corporate culture' as a basis for the criminal liability of corporations'.'

[75] The Bell Group Ltd (in Liq) v Westpac Banking Corporation (no 9) (2008) WASC 239 at 6156 and A. Capuano, 'Catching the leprechaun: Company liability and the case for a benefit test in organic attribution', (2010) 24(2) *Aust Jnl of Corp Law*, p 177-206.

[76] M. Pieth, 'Article 2 – The responsibility of legal persons', in M. Pieth, L. Low & P. Cullen (eds)., *The OECD Convention on Bribery: A Commentary*, Cambridge University Press, 2006, p 9.

[77] Farah FaraHani, 'Inconsistent approach of doctrine in corporate criminal', *Academia.edu*, 2019, https: //www.academia.edu/9974661/inconsistent_approach_of_doctrine_in_corporate_criminal.

[78] [1896] UKHL 1, [1897] AC 22.

[79] Yap Sing Hock & Anor v Public Prosecutor (1992) 2 MLJ 714.

[80] Hasani Mohd Ali, 'A review of corporate criminal liability in Malaysia', (2008) 19(6) *ICCLR,* p 192 – 199.

[81] (1944) KB 146.

[82] (2014) 1 CLJ 397.

[83] Learnard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915) AC 105.

[84] (1971) 2 All ER 127.

[85] (1973) 2 MLJ 77.

[86] Chin Jone Yueh, Sujata Balan a& Tay Pek San, 'Corporate *Mens Rea* in Malaysia and its potential for conceptual development', (2019) 2 *MLJ,* p 1-15.

[87] Section 34(c) Companies Act 2016.

[88] Chin Jone Yueh et al, 'Corporate *Mens Rea* in Malaysia and its potential for conceptual development, p 3.

[89] Tesco Supermarkets Ltd v Nattrass (1971) 2 All ER 127, p 135.

[90] (2009) 2 All ER 645.

[91] (1999) MLJU 220.

[92] Tesco Supermarkets Ltd v Nattrass, p 135.

[93] Section 17A (3) MACC Act, 2009 (2018 amendment).

[94] Chin Jone Yueh et al, 'Corporate *Mens Rea* in Malaysia and its potential for conceptual development ', p 14-15.

[95] M. Pieth & R. Ivory, 'Emergence and convergence: Corporate criminal liability principles in overview*',* in M. Pieth & R. Ivory (eds)., *Corporate Criminal Liability: Emergence, Convergence, and Risk*, Springer, Dordrecht, 2011, p 3–60.

[96] Criminal Officers' Committee of the Standing Committee of Attorney-General, Final Report: Chapter 2- general principle of criminal responsibility (December 1992) 104 – 108 (Final Report).

[97] Hasani Mohd Ali, 'Corporate Killing for Malaysia: A Preliminary Consideration', p 145 – 157.

[98] B.Meyer, T. Roomen & E. Sikkema, 'Corporate criminal liability for corruption offences and the due diligence defence. A comparison of the Dutch and English legal frameworks', (2014) 10(3) *Utrecht Law Review,* p 37-54, https: //doi.org/10.18352/ulr.283.

REFERENCES

Akanbi, K.O. 2014. The legal framework for corporate liability for homicide: The experience in Nigeria and the United Kingdom. *IIUM Law Journal* 22(1): 115-136. https: //doi.org/10.31436/iiumlj.v22i1.118.

Bribe payers index 2011. Transparency International, November 2, 2011, https: //www.transparency.org/en/publications/bribe-payers-index-2011.

Capuano, A. 2010. Catching the Leprechaun: company liability and the case for a benefit test in organic attribution, *Aust Jnl of Corp Law* 24(2): 177-206.

Chin Jone Yueh, Sujata Balan & Tay Pek San. 2019. Corporate *Mens Rea* in Malaysia and its potential for conceptual development. *MLJ* 2: 1 – 15.

Clough, J. & Mulhern, C. 2002. *The Prosecution of Corporations.* South Melbourne: Oxford University Press.

Consumer Protection Act 1999 (Act 599).

Corporate Criminal Liability. Spotlight on Corruption. http: //spotlightcorruption.org/better-laws/corporate-liability/ [1 May 2023].

Criminal Officers' Committee of the Standing Committee of Attorney-General, Final Report: Chapter 2- general principle of criminal responsibility (December 1992) 104 – 108 (Final Report).

David, O. 2011. *Smith and Hogan's Criminal Law.* 13th edn. New York: Oxford University Press.

DPP v Kent and Sussex Contractor Ltd (1944) KB 146.

Dunlop Malaysian Industries Bhd v Public Prosecutor (1985) 1 MLJ 313.

Eriksson, F., Kirya, M. & Stridsman, M. 2014. OECD public consultation on liability of legal persons submission by U4 Anti-corruption Resource Centre. http: //www.u4.no.

Farah Farahani. 2019. Inconsistent approach of doctrine in corporate criminal liability. Academia.edu. https: //www.academia.edu/9974661/inconsistent_approach_of_doctrine_in_corporate_criminal.

Friedman, M. 1970. The Social Responsibility of Business is to Increase its Profits. *The New York Times Magazine.* September 13.

Global Economic Crime and Fraud Survey: Malaysian Report. 2018. PwC. https: //www.pwc.com/my.

Gobert, J. 1994. Corporate criminal liability: Four models of fault. *Legal Stud.* 14 (1994): 401, https://doi.org/10.1111/j.1748-121X.1994.tb00510.x.

Gutman, J. & Lucas, V. 2018. Private – sector corruption: Measurement and cultural origins. *Soc Indic Res* 138: 747 – 770. https: //doi.org/10.1007/s11205-017-1684-3.

Hasani Mohd Ali. 2008. A review of corporate criminal liability in Malaysia. *ICCLR* 19(6): 192 – 199.

Hasani Mohd Ali. 2009. Corporate killing for malaysia: A preliminary consideration. *JUUM* 13: 145 – 157.

Helping Countries Combat Corruption: The Role of the World Bank. World *Bank,* 1997, https: //www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf.

Henning, P.J. 2007. The organizational guidelines: R. I. P? *Yale L.J*. 116(Pocket Part 312).

Hill, J. 2011. Corporate criminal liability in Australia: An evolving corporate governance technique? *Journal of Business Law* 1(1):. https: //www.doi.org/10.2139/ssrn.429220.

In re Helenic, Inc., (5th Cir. 2001) 252 F. 3d 395.

J. J. Child, J.J. & Hunt, A. 2022. Beyond the present-fault paradigm: Expanding mens rea definitions in the general part. *Oxford Journal of Legal Studies* 42(2): 438-467. https: //doi.org/10.1093/ojls/gqab033.

Kumpulan Wang Persaraan (Inc) v Meridian Asset Management Sdn Bhd [2012] 1 LNS 316.

Learnard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915) AC 105.

LeBaron, G. & Ruhmkorf, A. 2017. Steering CSR through home state regulation: A comparison of the impact of the UK Bribery Act and Modern Slavery Act on global supply chain governance. *Global Policy* 8(3): 15-28. https: //doi.org.10.1111/1758-5899.12398.

Li, J. & Harrison, J.R. 2008. Corporate governance and national culture: A multi-country study. *Corporate Governance* 8(5: 607-621. https: //doi.org/10.1108/14720700810913278.

Lim Kheng Kooi v R [1957] MLJ at page 199.

Liu Xiaoding. 2019. Corruption culture and corporate misconduct. *Journal of Financial Economics* 122(2): 307-327, https: //doi.org/10.1016/j.jfineco.2016.06.005.

Lync, G.E. 1997. The role of criminal law in policing corporate misconduct. *Law & Contemp. Probs* 60: 23 – 39. https: //doi.org/10.2307/1192003.

Malaysian Anti-Corruption Commission Act 2009 [Act 694].

Mayer, B., Roomen, T.V. & Sikkema, E. 2014. Corporate criminal liability for corruption offences and the due diligence defence. A comparism of the Dutch and English legal framework. *Utrech Law Review* 10(3): 37. https: //doi.org/10.18352/ulr.283.

Mendelsohn, M.F. (ed). 2018. *The Anti-Bribery and Anti-Corruption Review.* 7th edn. London: Law Business Research Ltd.

Meridian Global Funds Management Asia Ltd v Security Commission (1995) 2 AC 500.

Meyer, B., Roomen, T.V. & Sikkema, E. 2014. Corporate criminal liability for corruption offences and the due diligence defence. A comparison of the Dutch and English legal frameworks. *Utrecht Law Review* 10(3): 37-54. https: //doi.org/10.18352/ulr.283.

Nanda, V. 2011. Corporate criminal liability in the United States: Is a new approach warranted? In Pieth, M. & Ivory, R. (eds). *Corporate Criminal Liability*. P62. London: Springer.

New York Central & Hudson River Railroad Company v. United States, (1909) 212 U. S. 481.

Nur Hazirah Zainudin & Wan Mohd Zulhafiz Wan Zahari. 2018. Whistleblowing: A Western and Shari'ah perspective. *IIUM Law Journal* 26(1): 99. https: //doi.org/10.31436/iiumlj.v26i1.362.

Nur Yusliana Yusoff & Rusni Hassan. 2022. Corporate criminal liability in Islamic Banks in Malaysia. *IJLF* 14(2): 363-375. https: //doi.org/10.1108/IJLF-04-2021-0067.

Oh, E. 2019. New bribery legislation arrives in Malaysia. *ACCA Think ahead*. January 2. https: //www.accaglobal.com/in/en/member/member/accounting-business/2019/02/insights/bribery-legislation.html.

Organizations Receiving Fines or Restitution. 2010. Sourcebook for Federal Sentencing Statistics, U.S Sentencing Commission. https: //www.ussc.gov/dara_and_statistics/Annual_Reports_and_Sourcebooks/2010/Table51.pdf.

Osemek, N. & Osemeke, L. 2017. The effect of culture on corporate governance practices in Nigeria. *International Journal of Disclosure and Governance* 14(4): 318-340. https: //doi.org/10.1057/s41310-017-0028-5.

Pacelli, J. 2019. Corporate culture and analyst catering. *Journal of Accounting and Economics* 67: 120-143. https: //doi.org/10.1016/j.jacceco.2018.08.017.

Pendakwa Raya v Intrakota Consolidated Bhd (1999) MLJU 220.

Pieth, M. 2006. Article 2 – The Responsibility of Legal Persons. In Pieth, M., Low, L. & Cullen, P. *The OECD Convention on Bribery: A Commentary.* P 9. Cambridge University Press.

Pieth, M. and Radha Ivory. 2011. "Emergence and convergence: Corporate criminal liability principles in overview. In *Corporate Criminal Liability*: Emergence, Convergence, and Risk ed. Mark Pieth and Radha Ivory (Dordrecht: Springer, 2011), 3–60.

Public Prosecution v Datuk Haji Harun bin Haji Idris (No. 2) [1997] 1MLJ at page 22.

Public Prosecutor v Ginder Singh & Chet Singh (1948) 1 MLJ 194b.

Qingxiu Bu. 2018. The culture variable vis – a – vis anti-bribery law: A grey area in transnational corporate criminal liability. *Eur Bus Org Law Rev* 19: 183-213. https: //doi.org/10.1007/s40804-017-0089-8.

R v Chargot Limited (t/a Contract Services) and other (2009) 2 All ER 645.

R v P & O European Ferries (Dover) Ltd (1991) 93 Cr App R 72.

Ramirez, M. 2005. The science fiction of corporate criminal liability: Containing the machine through the corporate death penalty. *Arizona Law Review* 47 940.

Rini Agarwal. 2016. Corporate liability: UK Bribery Act – legal overview. *STA Law Firm.* https: //www.stalawfirm.com/en/blogs/view/corporate-liability-uk-bribery-act.html.

Robinson, A.A. 2008. 'Corporate culture' as a basis for the criminal liability of corporations. United Nations Special Representatives of the Secretary – General on Human Rights and Business, Business & Human Rights Resource Centre.

Robinson, P.H. 1999. Mens Rea. *Nelico Legal Scholarly Repository*: 8-19.

Rose, C. 2016. The UK Bribery Act 2010 and accompanying guidance: Belated implementation of the OECD Anti-bribery Convention. *International and Comparative Law Quarterly* 16: 485-499. https: //doi.org/10.1017/S002058931200036.

Rusni Hassan & Aishath Muneeza. 2022. The need to eliminate mismanagement and corruption in Islamic social finance institutions. *IIUM Law Journal* 30(S2): 423-444. https: //doi.org/10.31436/iiumlj.v30iS2.774.

Salomon v A Salomon & Co Ltd [1896] UKHL 1, [1897] AC 22.

Sarre, R. 2007. White-collar crime and prosecution for 'industrial manslaughter' as a means to reduce workplace deaths. In Pontell, H.N. & Geis, G. (eds). *International Handbook of White-collar and Corporate Crime.* New York: Springer.

Schwartz, M.S. 2013. Developing and sustaining an ethical corporate culture: The core elements. *Business Horizons* 56: 39-50. https: //dx.doi.org/10.1016/j.bushor.2012.09.002.

Securities Commission Act 1993 (Act 498).

Serious Fraud Office (SFO) v Standard Bank PLC case No: U20150845. https: //www.judiciary.gov.uk/wp-content/uploads/2015/11/sfo-v-standard-bank_preliminary_1.pdf.

Simons, K.W. 2017. Can strict criminal liability for responsible corporate officer be justified by the duty to use extraordinary care? *Crim Law and Philos* 12: 439. https: //doi.org/10.1007/s11572-017-9431-z.

Standard Chartered Bank v. Directorate of Enforcement (2005) 4SCC 530.

Stark, F. 2013. It's only words: Meaning and mens rea. *Cambridge University Press* 72(1): 155-177. https: //doi.org/10.1017/S0008197313000056.

Teka, R.D. & Donaldson, R. 2017. Corporate liability for economic crime: Submission from Transparency International UK. Transparency International UK. https: //www.transparency.org.uk/.

Tesco Supermarkets Ltd v Nattrass (1971) 2 All ER 127.

Tesco Supermarkets Ltd v Nattrass (1971) 2 All ER 127, 135.

The Bell Group Ltd (in Liq) v Westpac Banking Corporation (no 9) (2008) WASC 239.

United States v Bank of New England (1st Cir. 1987) 820 F 2d 844.

United States v Cincotta (1st Cir 1982) 689 F 2d 238 at 241.

United States v Richmond (8th Cir 1993) 700 F 2d 1183.

United States v. Automated Med. Labs., Inc., (1985) 770 F. 2d 399.

Unites States v. Blood (6th Cir. 2001) 435 F. 3d 612.

Weissmann, A., Zeigler, R., Mcloughlin, L. & Mcfadden, J. 2008. Reforming corporate criminal liability to promote responsible corporate behavior. The US Chamber Institute for Legal Reform. http: //www.instituteforlegalreform.com/uploads/sites/1/WeissmannPaper.pdf

Wong, K. 2012. *Breaking the Cycle: The Development of Corporate Criminal Liability.* LLB Thesis, University of Otago.

Wyk, V. & Weiss, B. 2019. Validity of the Corporate Ethical Virtue (CEV) model in a South African study context: A case study. *African Journal of Business Ethic* 13(1): 12 – 36. https: //doi.org/10.15249/13-1-203.

Yap Sing Hock & Anor v Public Prosecutor (1992) 2 MLJ 714.

Yeo, S., Morgan, N. & Chan Wing Cheong. 2002. *Criminal Law in Malaysia and Singapore.* 2nd edn. Kuala Lumpur: Lexis Nexis.Yue Chi Kin v PP [2019] 1 LNS 1874.

Yue Sang Cheong Sdn Bhd v Public Prosecutor (1973) 2 MLJ 77.

Zurich Insurance Malaysia Bhd v AM Trustee Bhd & Anor; Meridian Asset Management Sdn Bhd (Third Party) and Anor (2014) 1 CLJ 397.

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