



## **The Basis Of Corporate Criminal Responsibility In Nigeria**

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### **Abstract**

Corporate crime is currently one of the most delicate and disquieting topics occupying the media, the general public, academics, politicians, and criminal justice institutions in Nigeria. This essay attempts to justify the rationale behind corporate criminal liability, explores the tricky issue of mensrea as it relates to corporate entities, and offers tenable justifications for the effective implementation of corporate criminal liability in Nigeria. The article uses a doctrinal approach to investigate conceptual clarification, theories of corporate criminal liability, corporate criminal responsibility/liability in Nigeria, techniques for determining the fundamental elements of crimes involving corporations, criminal responsibility under the Administration of Criminal Justice Act 2015 and the Companies and Allied Matters Act 2020, corporate criminal responsibility under the common law, and corporate criminal liability under the United Kingdom Corporations Act. The study discovers that these corporate crimes have a domino effect that may not be immediately evident, such as long-term consequences on the environment and social fabric. In order to combat the growing tendency of corporate crimes, the paper advises the expenditure introduction of the Nigerian corporate manslaughter law as a distinct offense with distinct ingredients or features that can be successfully prosecuted.

**Keywords-** Corporate, Criminal, Basis, Responsibility, Enforcement

### **1.0 INTRODUCTION**

The practice of assigning human characteristics to a business today is essentially the criminal law doing its job. All that must be proven is that the act or omission occurred while the corporation was conducting business. The need for corporate activity regulation and for holding them accountable when found guilty follows from the foregoing.

In light of this, this study aims to evaluate the Nigerian corporate criminal liability system's legal foundation. As a result, there are eight sections in the paper after the introduction.

Conceptual clarification is examined in the first section. It defines the terms corporation, criminal culpability for corporations, and corporate crime. It claims that the focus of this article is on criminal and business law, where it is crucial to briefly define or clarify such fundamental concepts.

The second portion examines corporate criminal liability theories. It contends that the origin of corporate criminal liability was the imitation of criminal liability. Additionally, it contends that many models and theories of criminal culpability, such as the Agency Theory (vicarious liability), the Identification Theory (Attribution or Alter ego), and the Aggregation Theory, have been established to better fit and serve the structure of the corporation (collective knowledge).

The final section covers corporate criminal liability and accountability in Nigeria. It asserts that numerous statutory laws have addressed the topic of corporate criminal culpability in Nigeria, either explicitly or implicitly.

The fourth segment looks at how to prove the fundamental aspects of corporate crime. It asserts that the issue with assigning criminal liability to corporations extends beyond questions regarding the potential efficacy of the criminal code as a tool for policing corporate misconduct. It also asserts that criminal behavior must have both *actus reus*, or physical aspects, such as conduct, consequences, and omissions, and *mens rea*, or mental factors, such as intention, recklessness, and negligence.

The Administration of Criminal Justice Act of 2015 and the Companies and Allied Matters Act (CAMA) of 2020's criminal liability are covered in the fifth part. It claims that the ACJA provisions are insufficient even if they provide the grounds for the arraignment and the means of bringing a criminal case against businesses. The section further contends that the Companies and Allies Matters Act has resolved the complex issue of identification in corporate criminal liability as well as the identification theory used by the English courts in successfully dealing with corporate criminal liability because it did not specify how the fundamental elements of corporate crimes can be proven or made out. This only favored the company's liability through the very top managerial agents and permitted other officers' acts only when they were expressly or implicitly allowed.

The sixth section focuses on common law corporate criminal liability and culpability. It contends that a company is vulnerable to criminal culpability under common law, with some exceptions, including assaults, manslaughter, rape, and murder. This appears to be a change from the past, when a company was criminally liable for misfeasance as well as nonfeasance activities.

According to the 2007 Corporate Manslaughter and Corporate Homicide Act (CMCHA) of the United Kingdom, the seventh section discusses the criminal responsibility of corporations. It claims that this new law is a welcome advancement that, among other things, modifies the common law identification principle, as noted by the concept of collective knowledge or aggregation model, such that, rather than being dependent on the guilt of one or more individuals, liability for the new offence depends on a determination of gross negligence in the way the organization's operations are run.

A recommendation section closes the study in section eight.

### **1.1 CONCEPTUAL CLARIFICATION**

Corporate crime, which has roots in English common law, is one of the most delicate and uncomfortable problems presently occupying the media, the general public, academics, politicians, and criminal justice authorities in Nigeria.

Initially, the common law and the laws of other countries, including Nigeria, held that because companies were abstract creatures, they were unable to commit crimes requiring *mens rea*. However, certain members are (Florin S. and Chirita R. 1993). Three objections led to this predicament. One of these was the false belief that criminal courts required the accused to stand in the dock and did not allow "appearance by attorney." The second was that the law had foreseen and recognized that because the business didn't actually exist, it was unable to have a will and, hence, a guilty mind. The third was that the corporation lacks both mind and body, making it incapable of receiving the typical consequential punishments. It also lacks a soul that could be condemned, as well as a body that could be hanged or imprisoned (Omimakinde S. E and Omimakinde P. T., 2020).

The common law jurisprudence began to gradually adopt the idea of corporate criminal responsibility by the middle of the seventeenth century, and in Nigeria by the middle of the eighteenth century. The Suttons Hospital Case is one of the earliest cases in which this problem is discussed. Blackstone stated the following in 1968:

a total corporate... Being invisible and existing only in thought and legal contemplation, they cannot physically manifest. It cannot bring or be named in a case of battery or other similar personal injuries because a company cannot be beaten or beaten in its (sic) body politic. Additionally, it is incapable of receiving a traitor's or criminal's penalty because it is not subject to corporal punishment, attainder, forfeiture, or blood corruption. Additionally, because of how

ideal its existence is, no one can capture or detain it. Additionally, a company cannot be excommunicated because it lacks a soul (Blackstone, 1769).

Any crime would consequently be extra vires because a company, as a creation of the Company and Allied Matters Act, 2020, could only act in ways that were expressly permitted by its memorandum and articles of association. This created an additional issue when trying a corporation.

However, corporate criminal wrongdoing or crime is more common than ever before, and it is still believed to be difficult to prosecute businesses because the main criminal laws do not recognize the offenses that can be committed by corporations. In addition to fraud and other heinous offenses, these corporate crimes cause significant losses in lives and property. Massive losses of wealth, employment, and human life are the effects that have the greatest immediate impact on our society. Nevertheless, it is important to remember that these crimes may have negative long-term implications that are not immediately visible, such as harm to the environment and public health. The aforementioned factors have undoubtedly heightened calls for a switch from environmental impact assessments to environmental and social impact assessments (ESIA) (Dendema B, 2015). The Criminal/Penal Codes and the Administration of Criminal Justice Act, which were both passed into law in 2015, are the main criminal statutes in Nigeria. Despite the fact that Section 51 of the Criminal Code designates companies as having committed the offense of publishing seditious material, neither of these statutes has yet to specify the offenses that can be committed by corporations or how mens rea can be established against them. This was the basis for the following early cases such as *R. v Ziks Press (1947)*, *African Press Ltd. V. R. (1952)*; *Service Press Ltd. V AG (1952)*; *R. v Amalgamated Press Ltd. (1961)* that were prosecuted.

The Companies and Allied Matters Act (CAMA), which was published 30 years ago, was recently updated to include a number of offenses that can be committed by incorporated bodies, marking a significant advancement in this area. Since CAMA 2020 was passed into law, there have been a number of differing opinions about some of its provisions, particularly Sections 834–836, which dealt with the problem of criminality committed by Trustees. In response to this corporate criminal phenomena, judicial and legal systems that could deter and punish corporate misbehavior were developed. Civil, administrative, and criminal laws have all addressed corporate misbehavior. Currently, the majority of nations concur that businesses can face penalties under administrative and civil laws. Other legal systems have not been able to voluntarily adopt these theories into their legal systems, despite the fact that some jurisdictions have recognized and applied the idea of corporation criminal culpability under diverse models.

In this essay, an effort is made to justify the goals of corporate criminal liability, the Nigerian perspective, and how the element of mens rea can be established against corporations. Finally, a tenable foundation is offered for the effective enforcement of criminal liability on corporations in Nigeria.

It is crucial to briefly define the following essential concepts, such as corporation, criminal culpability, and corporate crime, in the context of this article because the focus of the paper is on the intersection of criminal law and company law.

**Corporation:** The word "corporation" comes from the Latin root "corpus," which means "body," and refers to a "body of people," or a collection of individuals with legal capacity to act individually. Black's Law Dictionary (Garner B. A., 2004) defines a corporation as an entity, typically a business organization, with legal authority to act as a single person separate from the shareholders who own it and having rights to issue stock and exist indefinitely, as well as a group or succession of people established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, and exists indefinitely apart.

**Corporate Criminal Liability:** means holding a business or corporation liable for any criminal activity carried out by its representatives or workers that the business has benefited from. The

notion of vicarious liability, which holds that the master is held accountable for the actions of his or her servant, is the foundation of the principle of corporate criminal culpability.

**Corporate Crime:** "Corporate crime" has two distinct definitions. First, the term "Corporate Crime" can relate to offenses against the corporation, such as expropriation of corporate opportunities, insider trading, fraudulent trading, breach of fiduciary duty, and other offenses. The phrase could also be used to describe offenses done by the corporation as a whole. Therefore, the crimes perpetrated by the company or the crimes in which the firm is a culprit are the focus of this article, which will be covered in great detail below (Omimakinde S. E. and Omimakinde P. T., 2020; Erhuze S. and Momodu D., 2015).

## 1.2 THEORIES OF CORPORATE CRIMINAL LIABILITY

Corporate criminal responsibility first appeared as a criminal liability imitation. Models and theories of criminal responsibility have been developed to match and enhance the corporate structure. The corporate criminal liability framework that exists today is the most sophisticated in the United States. The majority of conceptions of corporate criminal responsibility are characteristic of advancements in common law that were applied on a case-by-case basis. The weak foundation or individualistic foundations of these ideologies, however, have made them ineffectual.

### Agency Theory (Vicarious Liability)

This idea was initially developed for tort law and then subsequently expanded to cover criminal law. In this case, the business is responsible for the deeds and intentions of its employees. The foundation of vicarious culpability is Respondent Superior, which simply means to let the master respond. It is a general rule of tort law that an employer can be held accountable for any actions taken by an employee while they were doing their duties. In the US, various liabilities are frequently used. Other jurisdictions have established the doctrine in relation to hybrid and strict liability offenses but not mens rea offenses.

The actus reus and mens rea, or the act and the purpose, are the two components that make up a criminal infraction. This is the foundation of the agency theory. Because a business is an incorporeal legal entity, the only method to infer intent is through taking the employees' motivations into account. Anyone who has an intention within a firm is a member of that corporation, therefore an employee's aim is also the corporation's intention.

Employees must be acting within the extent of their job in order for the corporation to be held vicariously accountable for their actions. The corporation was found guilty of breaking the Elkins Act in the case of *New York Central Railroad Co. v. United States* (1969) when a general and an assistant traffic manager paid rebates for the shipment of sugar. Due to their ability to establish freight prices, the agents were acting within the parameters of the actual authority system. As a result, they behave in accordance with the authority granted to them by the organization. Even the conduct of third parties might be seen as representative of the business.

In the 1947 case *United States v. Parfait Powder Puff Co.*, it was decided that independent contractors could work for the corporation's gain and so expose it to criminal prosecution. Because they had the power to regulate freight rates, the agents' actions were within the bounds of their actual power. They therefore acted within the bounds of the power granted to them by the corporation. Even the actions of third parties might be seen as corporate actions.

Second, even if the firm does not actually obtain the benefit or if the act was explicitly forbidden, the employee must be operating at least partially in the company's best interests. Given that many workers are primarily focused on their own personal gain, it is not required for the employee to be concerned with the company's best interests (*United States v Bainbridge Management*, 2002). The act and intent must also be attributed to the corporation as the third factor (*United States v One Parcel of Land*, 1992).

### **Identification Theory (Attribution or *Alter Ego*)**

The development of a direct responsibility theory was influenced by the more conventional direct liability theory, according to which corporations are accountable under common law in the majority of nations. According to the argument, businesses should be held accountable for the individuals who have the power to make corporate policy rather than the individuals who carry it out. It emphasizes on the firm's guiding principles and the idea that its employees' intentions and deeds are what make up the organization. The theory is also known as the Alter-Ego or Doctrine of Attribution.

In *Lennard's Carrying Co. Ltd v. Asiatic Petroleum Co. Ltd.* (1915), Viscount Haldane created what is now known as identification theory, a method of primary corporate criminal culpability for offenses requiring mens rea. The identification of the guilty mind is the theory's central tenet. A good example is the *Tesco Supermarket v. Nastrass* (1972) case, when the identification of the person who came to be recognized as the corporation itself and who will serve as the very ego or personality of the company was acknowledged. A firm has a brain that directs its actions and is connected to a human body. The company's Board of Directors, Managing Directors, and other senior officials who carry out management and control are regarded as the company's will and mentality. Some countries, including the US and Australia, have consistently used this rule. In Canada, the definition of "offices" has been expanded to encompass "everyone who has a major role in making policy or administering an essential element of the organization's activities." Those in charge of operations and policymaking would also be included in this. Nigeria has adopted this philosophy as well.

### **Aggregation Theory (Collective Knowledge)**

This idea was initially developed for tort law and then subsequently expanded to cover criminal law. In this case, the corporation combines the collective expertise of many officers to assess culpability. To determine whether a crime would have been committed if it had been committed by just one person, the organization adds up all the acts and mental components of the significant individuals within the company. The procedures of American Federal Courts have led to the doctrine of aggregation. In the landmark case of *United States v. Bank of New England* (1987), the court found that businesses compartmentalize information by breaking down the aspects of particular tasks and activities into smaller parts.

The collection of those elements shows the organization's understanding of a certain transaction. Whether employees who oversee one component of an activity are aware of those of employees who oversee a different aspect of the operation has no bearing. The idea appears to be based on the inferred or deemed knowing principle of respondent superior (vicarious liability). Even if no employee or agent has the required knowledge to satisfy the legislative criteria to be guilty of a criminal crime, the combined knowledge and actions of multiple officers that satisfy the components of the criminal offence are sufficient. Because they understand that a firm cannot be held accountable when even one person lacks that frame of mind, American courts have been cautious in how they have applied this ruling (Mrabure K. O and Iyoha A. A., 2020).

It is crucial to note that, according to Section 18 of the Interpretation Act (2004), "any company or association or body of person corporate or unincorporated" falls under the definition of "person(s)" as used in the Constitution unless there is something in the subject matter or content that is repugnant to such a meaning. The term "persons" as used in the constitution, every other written law, and all public documents passed, formed, or published before or after the constitution's start shall consequently include a corporation, association, or body of individuals that is corporate or incorporate. By virtue of this clause, firms may be considered criminally liable when certain conduct or omissions are prohibited by statutes, unless the criminalizing statute clearly states that it does not apply to corporations. It follows that businesses have constitutionally guaranteed rights and privileges as well as commensurate responsibilities. Some of the rights granted to corporations include the right to own real estate, which is protected under Section 43(1) of the Federal Republic of Nigeria's 1999 (as amended) Constitution, and the right to access justice, which is protected under Section 44(1)(b). Legal individuals can consequently possess property, bring legal actions, and be sued on their own behalf.

The Constitution, in this case, acknowledges that a legal person has the same rights and obligations as a natural person and should therefore be held to the same standards of liability as a natural person, including criminal liability (Omimakinde S. E. and Omimakinde P. T., 2020).

#### **1.4 METHODS OF ESTABLISHING BASIC ELEMENTS OF CRIME INVOLVING CORPORATIONS**

Insecurities regarding the possible efficacy of criminal law as a tool for managing corporate misbehavior are only one aspect of the issue with the attribution of criminal culpability to corporations. The allocation of the criminal offense's mental component is another contentious aspect of corporate criminal responsibility. According to the traditional understanding of criminal law, *actus reus* and *mens rea* are both necessary conditions for assigning culpability to an offender. A corporation must act responsibly and be eligible to receive a penalty before it can be held accountable for its criminal behavior. The cornerstone of theories of corporate criminal culpability is whether a business may or cannot be a responsible actor. The main problem in attaching criminal culpability to a corporation, according to F. Gerry, is the theoretical challenge of assigning a responsible mental state (or *mens rea*), a necessary component of most criminal offenses (apart from strict liability offenses), to non-human, artificial entities (Gerry F. 1999). Conflicting ideas regarding who or where to look for the subjective element or *mens rea* of the offense lead to differences among corporate liability theories. A different criterion that contends that *mens rea* can legally be found in the corporation itself coexists with the idea that corporate *mens rea* should be found in each individual member of the corporation. In contrast to these two trends, the traditional view that corporate *mens rea* is impossible is still valid in civil law jurisdictions and has even made a comeback in common law systems (Andrew J, 1973). The maxim is analyzed from its two components, the *actus reus* and *mens rea*, for the examination in this paper. But it should be highlighted right once that the *mens rea*, or the law governing the purpose of the artificial body to commit crimes, is the core of this study.

##### **Corporate *Actus reus***

Critics tend to cast doubt on the mental component of the two elements—*actus reus* and *mens rea*—that must both be present for criminal behavior to qualify as such. There isn't much discussion about the act component of corporate malfeasance. One might speculate that this is either because it is accepted that corporations are unable to act at all or because it is anticipated that they cannot act at all. Even though the first assumption is true, it is nevertheless important to go through several features of businesses' capacity for action. In general, it consists of actions, their results, and the environment in which they occur (the condition of affairs), to the extent that they are pertinent or the act or event is against the law. The three physical components are omission, conduct, and consequence.

##### **Conduct**

To be found guilty of a crime, the accused must have acted voluntarily when committing the *actus reus*. With the exception of strict responsibility offenses, this is always the case. Behavior is typically only deemed involuntary when the accused was not in control of his or her own body (when the defense of insanity or automatism may be available) or when there is extremely strong pressure from another person, such as a threat that the accused will be killed if he or she does not commit a particular offense (when the defence of duress may be available). Some mishaps could be considered by the court to be unintentional behavior that doesn't warrant criminal prosecution. But in *R. v. Brad* (2006) (*Abass v. People of Lagos State* 2016, *Omoniyi v. the State* 2014, and *Reg. v. Complin* 1975), the Court of Appeal took into account the situation in which a young man had consumed a lot of alcohol and drugs before sitting on a low railing on a gallery that looked out onto a dance floor. He lost his balance and fell, breaking a dancer's neck below him, leaving her wheelchair-bound. Even though the fall was a terrible accident, the Court of Appeal noted his prior voluntary behavior of being very drunk and perched precariously on the railing and thought that this choice behavior was sufficient to be deemed as having caused the fall's injuries.

##### **Consequence**

It must be demonstrated that the defendant's action is what led to the outcome. The defendant will not be held responsible if the outcome was brought about by an intervening act or incident

that was wholly unrelated to the defendant's at the time and that was not foreseen or anticipated. The defendant will still be held accountable if the outcome was brought about by both the defendant's act and the intervening act, as long as the defendant's act constituted a substantial contributing factor. The context of homicide and manslaughter has dominated most of the case law on the subject of causality (Section 405 Penal Code). But it's important to keep in mind that the question of causality applies to all crimes that result from them.

### Omissions

Even if there are instances where a non-lawyer would perceive an omission to have occurred, in law it would be viewed as an act and liability will be imposed. Under common law, criminal culpability is rarely imposed for true omissions. In scenarios where the accused is under an obligation to take action, there may be culpability for a genuine omission. Overall, the actus reus could emerge as a fatal shooting (behavior) or a situational or status offense like drunk driving or idling (Section 4(2) of the English Road Traffic Act 1988), where the states of being "idle" or "unfit" are involved (Ofori-Amankwah E.H. 1986). The actus reus are those who are driving. The failure to act in situations where there is a legal need to do so may also constitute the actus reus. For instance, a company may neglect (omit) to provide safety equipment for its employees, which may result in the employee(s)' death or injury (consequence). This also includes clauses that make it illegal for businesses and other people to submit certain types of returns without being required to.

Some believe that some of these omissions should be punished in the same way as acts are punished (Ofori-Amankwah E. H. 1986); others believe that all of these omissions should not be penalized. There is little doubt that a gaoler who intentionally kills a prisoner by failing to feed him or her, or a nurse who intentionally kills a child who was placed in her care by failing to rescue it from a tub of water where it had fallen, should be charged with murder. However, it will be difficult to argue that a man should be punished as a murderer simply because he neglected to assist a beggar. Even though there may be the strongest evidence that the beggar's death was a result of this omission, the individual who failed to provide the alms is aware that the beggar's death was probably a result of the failure to do so. Because omission requires more, like a duty or legal requirement, in order to qualify as a crime, it is challenging to compare it to an act.

Corporate actions are sometimes criticized for failing to satisfy the actus reus requirement since they only take action when real persons, with flesh, blood, and minds, do so on their behalf (Berry F. 1999). It goes without saying that to state a company acts is to indicate that this activity involves a human being or that it was done by a human being. In actuality, criminal liability is traditionally assigned based on authorship, meaning that only the individual who executed or caused the crime can be held accountable. In addition, according to Sistare (Sistare C. 1989), if sacrosanct, this notion should bar accountability for other people's actions. However, the authorship principle is not inviolable, hence this is not the case. Criminal responsibility has been assigned when one person's action is mistakenly seen as the action of another, as in the cases of strict liability offenses, vicarious liability offenses, and criminal liability for carelessness. Therefore, while businesses can be held accountable for the actions of its members, assigning them criminal culpability does not violate the fundamentals of criminal law. One could claim that corporations only have the ability to act in a variety of ways (Larry M. 1991).

For the purposes of determining criminal responsibility, not all of the corporate members' conduct can be assigned to the organization. It is crucial that certain elements of the action, such as the impact of corporate culture and the connection between the action's author and the company, be identified. The act must be embellished by the entity's norms, rules, or practices; in other words, it must reflect the corporate culture. The researcher completely agrees with Cooper's statement that "If we are to blame a group for actions undertaken by its member, this must be by virtue of some practice, morality, rules, or "style of life" which distinguishes the group" (Peter A. 1998). Additionally, there must be a connection between the corporation and the act's author. According to Laufer's (Laufer S., 2007) test, the degree to which the agent and the corporation are related will determine whether it is appropriate to attribute a particular conduct to the corporate entity. The identification theory test and this test are comparable. It

thus creates the same issue: it limits the actions for which the corporation may be held accountable. In the case of criminal culpability, there is no need to establish new conditions to ascribe the individual's act to the company. Since companies can only be held liable through their employees, it makes sense to use the same standard as the vicarious responsibility theory, i.e., that the agent behaved lawfully.

### **Corporate mens rea**

The fault element is another name for this. This includes the mental component involved in committing a crime. A person must possess what has been variably referred to as "a guilty mind" (Chukkol K., 1998) or "a wicked mind" (Chukkol L., 1998) in order to be found guilty of a crime. This necessitates an investigation of the perpetrator's health or mental state at the time of the crime. In some cases, these expressions could be strange. For instance, the accused may act with a clean conscience and believe that what he did was ethically and legally correct without necessarily feeling guilty, and yet the act can still be deemed to have mens rea (Beale S and Adam G., 1982). Similar to this, a person may have killed out of pure emotion but still be considered to have committed an unlawful act.

Criminal culpability can only be attributed if the agent acts willfully incorrect, carelessly, or negligently. These traits may be present in a crime either consciously or unconsciously. Glanville Williams has succinctly stated the context in which they are to be used throughout this book as follows:

Intention is a state of mind that includes knowledge of all necessary conditions and the desire that any necessary outcome will undoubtedly follow. When there is awareness that a specific outcome is likely to or might result, that is what is meant by being reckless. As opposed to being a mental condition or requiring any element of forethought, accidental negligence is the state of failing to act in a way that is consistent with the appropriate level of care (William G., 1982).

Criminal law is characterized by the dictum "acts are not illegal in the absence of a guilty mentality," which can be translated as "an act is not criminal in the absence of a guilty mind." There are only a few exceptions to this rule, which are mostly regulatory offenses and statutory offenses that demand strict accountability. Both common law and civil law legal systems are in agreement that mens rea must be present and contemporaneous with the actus reus in order to qualify as an element offense. Therefore, corporate mens rea must be established in order to hold a corporate organization criminally liable. Mens rea is typically defined as the psychological component of the crime or the guilty mind. The word mens, which originally meant "thought," gave the notion of mens rea its individualized character. This individualistic flavor has been emphasized by contemporary criminal law. Most of the issues with assigning criminal culpability to businesses are a direct outcome of this extremely traditional view of mens rea.

One popular defense used against corporate criminal culpability is that because they lack minds, businesses can never satisfy the mens rea requirement. In fact, companies don't need brains because they don't have minds. From this foundation, academics like French, Fisse, Braithwaite, and Bucy established the idea that the mental component of corporate malfeasance can be discovered in the corporation's culture, attitude, and policy, course of conduct, or practice already present in the body corporate. According to them (Braithwaite F. and Bucy P. H., 1984), the corporate culture is the cognitive component where the corporate mens rea can be found. But in the *Lennard's Carrying Company v. Asiatic Petroleum Firm Limited* case (1915), the English House of Lords determined that certain company officers or organs stand in for the company's controlling mind. The state of mind of these managers (or organs) represents the company's state of mind and is considered as such by the law. The concept of aggregation combines the behaviors and mental states of those who are a part of the corporation to meet the requirements for an offense. Vicarious responsibility is a legal theory that holds corporations accountable for the mental component of the actions of its employees and agents.

Mens rea is the legal term for the state of mind that the definition of the alleged crime expressly or implicitly requires. Because every crime has its unique mens rea, which can only be determined by reference to its legislative definition or case law, this changes from offense to



offense. Mens rea can often be divided into three categories: intention, carelessness, and neglect.

### **Intention**

Intent on the part of the accused is the blame factor that must be proven for a variety of offenses, both statute and common law (Molan M., 2008). Intention can be inferred from the case's external circumstances. In *R. v. Wooden* (1999), Smith & Hogan stated that a result is intended when the actor intends to cause it. The court or jury may also find that a result is intended even when the actor has no intention to cause it when the result is a specific aftereffect of that act and the actor is aware that it is a specific aftereffect. In this sense, intention depends on predictability and desirability. Additionally, the term "intention" was defined as the choice to carry out, insofar as it is within the accused's power, a specific outcome, regardless of whether the accused wished for such outcome to result from his act or not (Card R., 1995).

Therefore, a consequence is only intended when it is wanted. As a result, when a consequence manifests, it indicates that it is desired. Additionally, a consequence is intended when it is either wanted or anticipated as a sure outcome of one's action. Therefore, the foundation of this opinion is foreseeability. In this case, a person's intention to cause an event includes both having no real doubt that his actions will lead to the event and having a purpose to do so. Overall, it is clear that, regardless of how nebulous or unconscious the desire may be, the desire for consequences is the distinguishing feature of intention. Until the contrary is established, it is presumed under common law that everyone intended the natural result of their actions.

From the foregoing, it may be inferred that purpose consists of three components:

- a. Volitional act or omission.
- b. understanding of the events leading up to the action or inaction.
- c. Desire to bring about the consequential harm.

Criminal liability may not be attached to a deliberate conduct that was committed without awareness of the circumstances and without malice in mind (Williams G., 1983). The words that are used to characterize the mental component of intention are as follows: *intentionally, corruptly, fraudulently, in possession, knowingly, maliciously, willfully, falsely and unlawfully* etc. These are terms which may be properly used in distinguishing different crimes from one other (Okonkwo C. and Naish, 1980).

### **Recklessness**

Being careless generally refers to taking an unwarranted risk. In recent years, it has undergone a significant legal definition modification. The emphasis is on what the defendant was thinking because it is now obvious that mens rea is a subjective concept. Recklessness will always be interpreted as necessitating a subjective test, as was the case in the English case of *Metropolitan Police Commissioner v. Caldwell* (1983). In that case, the Law Commission's 1989 Draft Criminal Code Bill's definition of recklessness was favored by the House, as follows: One does something careless ... With respect to...

A situation in which he is aware of a risk that it exists or will exist, a consequence in which he is aware of a risk that it will occur, and in which it is unreasonable for him to take the risk given the information he is aware of.

This standard of recklessness must be met by the defendants at all times. They also had to have acted in an unreasonable manner. It would seem that as long as the court deems the risk-taking unjustified, any amount of risk knowledge will be adequate.

When the defendant in *R. v. Cunningham* (1982) smashed a gas meter to steal the money within, the gas spilled into the residence next door. While sleeping there, Cunningham's future mother-in-law developed a serious illness that put her life in peril. Cunningham was charged under *Section 23 of the Offences against the Person Act 1861 with 'maliciously administering a noxious thing so as to endanger life'*.

According to the Court of Appeal, "maliciously" meant purposefully or carelessly. According to their definition, recklessness occurs when "the accused has known that the specific form of injury

may be done but has continued to assume the risk of it." The accused must truly have had the necessary foresight; this is known as a subjective test. Therefore, Cunningham would have acted recklessly if he knew there was a chance the gas would escape and endanger someone but still proceeded. However, due to trial misdirection, this conviction was overturned.

### **Negligence**

A body corporate must pass the same standard of carelessness as an individual. This involves behavior that is below the level of care that a reasonable person would exercise in the given situation and that poses such a significant danger that the physical element is present or will be present that it justifies criminal prosecution for the offense. A person is said to be negligent if he does something that a reasonable man under similar circumstances would not do or omits to do something that a reasonable man would do, according to the Supreme Court of Nigeria's ruling in *Federal Ministry of Health & Anor v. Comei Shipping Agencies Ltd.* (2011).

The concept of negligence was introduced from civil law to criminal law. Negligence is simply failing to act in a way that a reasonable man would in circumstances where the law expects reasonable behavior. It is a mental element for minor offenses where intention and recklessness will not serve a meaningful purpose. It is solely an impartial test that is employed to determine criminal responsibility. The argument for penalizing carelessness is that a man should exercise caution. In addition to discouraging people from not taking care of themselves, the goal is to educate people about taking care by establishing fair standards.

Since it doesn't call for foresight or awareness of the risk in question, negligence can be distinguished from purpose and recklessness as a truly objective blame factor. Therefore, there is a clear overlap between Caldwell type recklessness and negligence in that an individual who unwittingly accepts a risk of which he should have been aware possesses both Caldwell type recklessness and negligence characteristics. However, the starting point is that negligence is a wilder idea since it covers the scenario in which a person was made aware of the potential for the risk in question but incorrectly believed that it did not exist.

Overall, recklessness consists of intention to do the act or omission and foresight of possible harm but does not include the desire to bring about the harm. Mens rea's element of intention, on the other hand, consists of volitional act or omission, knowledge of circumstances surrounding the act or omission, and the desire to bring about the consequential harm. Additionally, recklessness is intended as an alternative. Therefore, for a conviction to stand against the accused in a rape case, the prosecution must show one of these mental factors. This is due to the mental factors of intention and carelessness that must be established in serious cases.

For its part, negligence is a mental component for minor crimes where intent and recklessness are ineffective, and in certain circumstances, carelessness can also be a mental component for corporate crime proof. While criminal liability is assessed using a subjective standard for intention, it is assessed using an entirely objective standard for carelessness. In the recently unreported American case of *United States v. BP PLC*, a negligence case example may be found (2012). The question on the court's agenda in this case was whether the Deep Water Horizon Drilling, which exploded and killed eleven people, was the fault of British Oil Giant Company BP PLC or reckless behavior. The corporation, two of its well-site managers, and the former Chief Executive Director of the Company were charged with fourteen felony counts, including eleven involuntary manslaughters for the deaths of the eleven victims, in front of the US Federal District Court. The three officers and the company's representatives both entered guilty pleas to each and every charge. Before the trial began, the three corporate officers and the British Oil Giant Company's legal team asked the court for permission to settle the case amicably outside of court and submit the details of the agreement for the court to approve as a consent decision. Mr. Eric Holder's request was approved since the U.S. Federal Attorney-General did not object. The case was postponed until November 28, 2012, when the parties will report on their agreement and adopt its contents. The court was requested to adopt the same as consent decision after the parties filed their conditions of settlement on November 28, 2012. The court entered a consent judgment in favor of the plaintiff (the United States) in the following terms based on the terms of settlement provided by the parties and their attorneys: (a) The

British Oil Giant Company BP PLC shall pay a criminal penalties of \$4.5 billion. (b) BP Plc. shall pay a settlement of \$525 million to the Securities and Exchange Commission. The BP oil firm must (c) apologize to the country for the harm the oil spill into the Gulf of Mexico caused, and (d) sign a 5-year probationary order to behave properly. This is a blatant instance of irresponsibility, even though the judge's ruling was unjustified. It is argued that judging by the provisions of the contract, the oil corporation must have acknowledged committing the offenses under investigation.

The actual scope of offenses that could be addressed in the area of corporate criminal responsibility is one issue that legislative intervention could solve. At first glance, it would appear that this is not a problem in Nigeria because "person" includes both artificial and natural persons, and because a business can always choose to pay a fine under the statutory definition of our penal laws. However, there are some offenses that are not penalized by a fee. For instance, it would be unfathomable for a corporate officer to engage in bigamy, rape, or incest while performing official duties. For instance, unlike Nigeria's Companies and Allied Matters Act, which fails to define the range of corporate crime to be covered by the Act, the United States Model Penal Code provisions listed a wide number of offences to be covered in the realm of corporate crime (Omimakinde S. E. and Omimakinde P. T. 2020).

### **1.5 THE ADMINISTRATION OF CRIMINAL JUSTICE ACT OF 2015 AND THE COMPANIES AND AFFILIATED MATTERS ACT OF 2020 DEFINE CRIMINAL RESPONSIBILITY.**

The Administration of Criminal Justice Act (ACJA) entered into effect in May 2015, but besides failing to make specific provisions for corporate criminal liability, as is the case elsewhere, our ACJA also failed to include any provisions regarding how corporations are to be held accountable for criminal offenses and how the crucial tasks of mens rea and actus reus are to be handled. Additionally, it omitted to specify the variety of offenses that corporations are capable of committing. Can a business be charged with murder, manslaughter, rape, or bigamy, for instance?

By virtue of Section 494 (2015), which states that "offense" means an offense against an Act of the National Assembly, one (both natural and legal person) may be liable for committing an offense that is not necessarily included in the Administration of Criminal Justice Act, 2015, but created under another statute. Section 478 (ACJA 2015), which deals with corporate pleas, is of particular importance to this paper and is hereby reproduced as follows:

When a corporation is called upon to enter a plea to any charge or information, including a new charge or information framed under the provisions of this Act or a charge or information added to or altered under this Act, it may enter in writing by its representative a plea of guilty or not guilty or any other plea that may be entered under this Act, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid say plea, the charge or information

The fact that this section specifically states that businesses can be charged in court and that their guilty pleas can be filed in writing through a representative marks a substantial divergence from the foregoing. As a result, the corporation will in this case carry full criminal responsibility and there is no shift or removal of the company's criminal duty. Because of this, it might be claimed that this section recognizes corporate criminal culpability but omits a list of corporate-committable offenses. Furthermore, according to Section 479, "An information may be preferred against a corporation following the preparation of the proofs of evidence relevant to the charge (ACJA, 2015)".

It is evident from the foregoing that the ACJA provisions are insufficient for adequately addressing corporate criminal culpability, particularly corporate manslaughter, despite providing the foundation for the arraignment and method of commencing a criminal case against businesses. Therefore, it is deemed appropriate to state that under the Interpretation Act's definition and the phrase "any person who..." The term "person" in the ACJA refers to a

corporation in Nigeria. It is common knowledge that companies, like real persons, are capable of being held accountable for every crime listed in our penal code.

However, recent legislation changes in Nigeria have come to acknowledge a range of offenses that companies may commit and have chosen various punishments. In 1990, Nigeria passed its first law establishing corporate criminal liability for the actions of corporate organs, officials, and agents. The Nigerian government gave in to the recommendations made by some writers (Vukor-Quarshile G. N. 1986) for the introduction of corporate criminal responsibility under the Nigerian criminal law in the aforementioned year. The Companies and Allied Matters Act was enacted in 1990, and on August 7, 2020, President Muhammadu Buhari signed the Companies and Allied Matters Act, 2020 (CAMA 2020) Amendment Bill, which repealed and replaced the Companies and Allied Matters Act, 1990. A crime committed by a corporation may subject it to direct liability under the Amended Act. Section 89 stipulates that:

Any action taken by a managing director or member of the board of directors while conducting business as usual for the company is considered to have been taken by the company as a whole, and the company is consequently subject to the same criminal and civil penalties as if it had been a natural person. (CAMA, 2020).

This clause reflects the opinion held by Lord Viscount Handale in the Lennards case (1915). Additionally, Section 89(b) states that:

If the company is in fact conducting a business, it will not be exempt from accountability for actions performed in connection with the business only because it was not one of the enterprises listed in the company's memorandum (CAMA, 2020).

This should be interpreted in accordance with Section 43 of the same Act, and it would seem that the previous requirement that the firm list all of its legal objectives has been eliminated.

The firm can exercise the powers that a natural person of full capacity can exercise since, according to Section 43 of the Act, it is considered to have those capabilities. The following officers' actions and decisions are deemed to be those of the firm for purposes of corporate criminal culpability under Section 89:

- i. The act of members in general meeting.
- ii. The Board of Directors.
- iii. The Managing Director.

In accordance with *Section 90*, the firm is also held accountable when the aforementioned recognized officials legally transfer their authority to another officer of the business. In certain situations, the business is also accountable. In certain circumstances, authority may be explicitly or tacitly given or authorized (CAMA, 2020). Additionally, authority may be transferred by the actions of any of the officers listed in Section 89 while taking the relevant facts into account. Additionally, authority may be granted prior to the delegated officer in issue acting in the manner in question or by ratifying the officer's behavior in the act (CAMA, 2020).

The same Act's *Section 90(2)* provided for the vicarious liability of the corporation for the actions of its employees while they were acting in the course of their lawful employment. Persons dealing with a corporation are allowed to assume that the firm's memorandum and articles of association have been properly followed under Section 93. They have the same right to believe that anyone identified as a director, managing director, or secretary has the proper authority to act in those capacities and has been legally appointed. Except, of course, where the person dealing with such a corporation had real knowledge to the contrary, this is true in all circumstances and especially so when attempting to suggest criminal accountability or responsibility. The combined impact of the aforementioned provisions has the practical use of making any decisions made by any of the bodies indicated in Section 9, including members at a general meeting, the board of directors, or a managing director of the company, ipso facto bind the firm. This is true even where an organ acting did not adhere to the prerequisites for the assumption of such powers, provided, however, that the third party was unaware that the prerequisites had not been completed before such an officer acted (Orojo J. 1992).

*Section 94* of the Act provides that:

When a company would be held accountable to a third party under Sections 89 to 93 of this Act for the actions of any officers or agents, the company would be responsible regardless of whether the officer or agent acted dishonestly or forged a document purporting to be sealed by or signed on behalf of the company, unless there is evidence of collusion between the officer or agent and the third party (CAMA, 2020).

Clearly, the complex issue of identification in corporate criminal culpability has been resolved by the Companies and Allied Matters Act. This supports the liability of the corporation only through the extremely high management agents and only permits the activities of other officials when they are openly or implicitly sanctioned, similar to the identification theory used by the English courts. As previously noted, the Act appears, to a superficial observer, to follow the Lennards case (1913), on the question of the directing mind. However, a comprehensive analysis of the Act would demonstrate that there are substantially more types of people than those that the Lennards' case suggested that can have their actions attributed to a company in Nigeria. Thus, the apparent limitation in *Section 83* of the Act can be cured by reading it together with *Section 87(1)* of the Act (CAMA, 2020) which provides:

A company must operate through its general meeting of members, board of directors, executives, or agents who have been appointed by or are acting on behalf of the general meeting of members or board of directors.

All of the people listed in *Section 87* are able to act on behalf of the company, thus it stands to reason that they can also hold the company personally accountable through their actions. Even though they were not appointed by the company, persons who were found to be officers of the company under certain circumstances, despite not having been appointed by the company, are included in the scope of liability under the Act (*Section 87* CAMA 2020).

Additionally, under the ACJA (2015), the firm may be held personally accountable even if the person who committed the offense was not the company's directing mind or will. Thus, if a company is included in the scope of the definition of crime under *Section 494* of the ACJA, it is personally liable for a crime that it cannot be said to have personally committed, just as a natural person would be liable for another's criminal activities (2015). The Interpretation Act, which defines individuals to include a corporate body, is taken into consideration in this argument. However, some of the issues with the revised CAMA 2020 that legislative action could help to further resolve are as follows:

1. The breadth and reach of corporate criminal responsibility should be restricted.
2. Describe how to prove the element of a crime against a corporation.
3. Describe the conditions under which a company might be held accountable for crimes carried out by its agents and employees.

Enejo asserts that for felonies, the prosecution must demonstrate the involvement of either one of the company's key departments or a senior management in her book (Enejo S. 2019). According to *Section 402* of the American National Commission on Reform of Federal Criminal Law (Final Report), which was published in 1971, any agent of the corporation who commits a simple or misdemeanor offense while acting in the course of their employment may be held liable.

4. Prescribe suitable punishments for offenses committed by corporate bodies. Typically, the penalty is a fine, but the corporation may also be forced to publicize the conviction through notices distributed to the public group or class of people who would be impacted by the conviction (*Section 405* American National Commission, 1971).

At this point, it must be made clear that despite the fact that the Companies and Allied Matters Act of 2020 has significantly broadened the definition of corporate criminal culpability, such liability still exists (Omimakinde S. E. Omimakinde P. T. 2020).

### 1.6 CORPORATE CRIMINAL LIABILITY/RESPONSIBILITY UNDER THE COMMON LAW

A business is subject to criminal culpability under the common law, subject to certain exclusions such as rape, murder, manslaughter, and assault. This appears to be a change from the past, when a company was criminally liable for misfeasance as well as nonfeasance activities. Due to the fact that strict liability welfare offenses under the common law system do not require the demonstration of mens rea, corporations are held accountable for those offenses by having their knowledge and intent imputed to their alter ego and directing mind. Additionally, it included situations in which businesses were held vicariously accountable for the deeds of their employees (DPP v Kent and Sussex Contractors Ltd., 1994). However, as has already mentioned, a company cannot be held criminally accountable for all "human crimes." Stable J. listed the following offenses under this category in Moore v. Brestler Ltd. (1944):

... Bigamy, a crime that cannot be committed through a third party, and perjury The premise for the exemption is that the court won't stultify itself by starting a trial in which, if a guilty verdict is given, no meaningful order by means of sentencing can be made. Murder is one such offense for which the court can only impose corporal punishment.

According to Stephen Griffin in *Griffith v Studebakers (1924)*.

A corporate entity cannot be found guilty of murder or manslaughter since an artificial entity cannot receive the mandatory punishment of the death penalty or life in prison, respectively, for such crimes:

However, despite this clear position of the common law regarding corporate criminal liability, there appears to be some judicial intervention for the basis for corporate criminal liability as evidenced by Birgham L.J.'s decision in the R. v. East Kent Coroner ex parte Spooner and Others (1988) on an application for a judicial review in the Queen's Bench Divisional Court, which revealed a tacit acceptance that a corporate body could be liable for the offence of manslaughters. He said

... The corporation can be found guilty of manslaughter if the necessary circumstances are presented. I don't understand why such a charge couldn't be made in theory. Whether the defendant is a company or an individual, the elements of manslaughter must be proven by presenting the essential mens rea and actus reus of manslaughter against it or him by properly relied-upon evidence.

According to Mueller (Mueller G.O.W 1957):

Why shouldn't a company be held criminally responsible for murder when, for example, the company's resolution sends its employees to a hazardous job site unprotected, while all officers conceal from the employees the fact that even a brief exposure to the specific work hazards will be fatal, as was the case at the infamous Hawk's West project in West Virginia, where wholesome death (as in the case of Bhopal in India) was attributed to silicosis?

Therefore, even though manslaughter was not considered to be a separate offense under common law, it is possible that a business may be found guilty of involuntary manslaughter, but only if it was done with gross carelessness. The House of Lords held in R. v. Adomako (1994) that the jury's use of the gross negligence criteria without consideration of the recklessness requirement as established in R. v. Lawrence was sufficient for a manslaughter conviction (1981). Therefore, in determining whether or not a company has broken its duty of care to the victim who passed away, the general principles of negligence law must still be applied. If this is proven, the next consideration is whether the victim's death was caused by the breach of duty.

The jury must also take into account whether the breach amounts to gross negligence. The jury will also have to decide whether the corporation's actions should have been deemed illegal in accordance with R. v. Lawrence (1981), depending on how far they deviated from the proper standard of care that should have been expected of them under the given circumstances.

Up until recently, it was not possible to convict a corporation of criminal negligence without also proving that the people who could be considered the "directing mind and will" of the organization were grossly negligent. This is referred to as the "identity concept" in common law.

A corporation's liability for involuntary manslaughter was determined in accordance with the identification principle since its artificial nature prevents it from committing a physical act that

is a requirement for the crime of manslaughter. The common law identification model holds that the company is liable for the acts of its senior executives and workers because the corporation shares these individuals' mental states. This is also referred to as the "Organic theory" or the "Alter Ego" ideology. There are specific people in every corporation that oversee and supervise its operations. These are regarded as representing the firm in that they act and think like the company would. Thus, the firm would be held accountable for its own actions rather than those of these senior officials or employees. The popular statements made by Viscount Haldene L.C. in the well-known case of *Lennards Carrying Company Ltd. v. Asiatic Petroleum Ltd.* (1915), in which he echoed the following:

The word "corporation" is an abstraction, my Lord. It must therefore look for its active and directing will in a person who can be called an agent for the same purposes but who is actually the directing mind and will of the corporation, its very ego and center of personality. Because the corporation neither has a mind nor a body of its own, it is unable to act independently.

In light of this, a company may be held accountable for the crime of involuntary manslaughter if its controlling mind's gross carelessness resulted in a person's death. However, it should be recognized that evidence against one defendant cannot strengthen a case against another defendant who is a personal defendant. To put it another way, a case against a corporation can only be made by evidence that is properly introduced to demonstrate the corporation's culpability as a whole, and the evidence against the corporation can only include evidence pertaining to the guiding mind and will (*Lennards case 1915*). In the case of *R. v. I.C.R. Haulage Ltd.* (1994), the actions of the managing director of the company were used to convict it of conspiring to commit fraud.

This is referred to as the "aggregation rule." In light of this, it has been suggested that a corporation may "avoid conviction for involuntary manslaughter in circumstances where an individual representing the company's controlling thought was incapable of being convicted for involuntary manslaughter (*Griffith's case 1924*)". The identification principle, however, is not without its challenges.

The formula needed to determine which group of employees should be regarded as the "*directing mind*" or "*alter ego*" of a firm has continued to be the most challenging undertaking. It may be challenging to try to create a distinction between a corporation's alter ego and its mere agents if it is acknowledged that the company's Memorandum of Association and Articles of Association are the obvious places to seek (*Lederman E. 1985*). Such authority and responsibility are dispersed throughout several departments and divisions due to the nature of contemporary global businesses. In such circumstances, there may be blatant issues with the division of duties and liabilities among the higher levels of a corporation. The fact that there have only been a small number of cases where a public business has been found guilty of involuntary manslaughter in England suggests that these flaws in the identification model precluded the prosecution from pursuing successful prosecutions against firms for the crime. *R. v. Kite & Oil Ltd.* is the first recent case that is known (1994). In this case, a firm that arranges canoe trips was found guilty of manslaughter (through its managing director) for the drowning deaths of four students as a result of the managing director's egregious misconduct.

Griffin also claimed that huge firms' sophisticated hierarchical management structures were to blame for this failure, saying that:

The failure to prosecute public firms may be explained in light of the intricate management systems used by huge corporations, which frequently obscure any connections between responsible employees and the company's managing director. In a large organization, subordinate echelons of management may misread, muddle, or misuse corporate policy and the implementation of corporate powers originating from the guiding mind. Although a negligent employee may have been following orders from a more senior employee, it is frequently believed that the negligent action lacked any direct or binding authority from the directing mind (*Griffiths case 1924*).

Tesco avoided responsibility in *Tesco Supermarket Ltd v Natrass* (1972) for the simple reason that the store manager could not be considered a member of the company's directing mind and had not been given authorisation by the directing mind to behave in a manner that was against the company's policy. In other words, it has always been extremely difficult to identify and penalize the major responsible officers of a firm.

The discussion and demand for the reform of the legal principles governing corporate criminal liability in general and corporate manslaughter in particular have gained traction throughout the world as a result of the recent upsurge in human disasters, accidents, and deaths in which corporations have been found to be at fault (though no major company has been found guilty). The UK has responded to this issue by enacting the "Corporate Manslaughter and Corporate Homicide Act 2007," which went into effect on April 6, 2008, in an apparent attempt to put an end to the practice of holding corporations accountable for corporate manslaughter (Erhuze E. and Momodu D. 2015).

### **1.7 CORPORATE CRIMINAL LIABILITY UNDER THE U.K. CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT (CMCHA), 2007**

This new law is a much-welcomed development that, among other things, modifies the common law identification principle noted above by the concept of collective knowledge or aggregation model such that, instead of being dependent on the guilt of one or more individuals, liability for the new offence depends on a finding of gross negligence in the way the organization's operations are run. In order to demonstrate a company's guilt for involuntary manslaughter, it must be kept in mind that under the common law identification concept, it was not conceivable to combine the responsible acts of individuals within a company's senior management cadre. It was necessary for the egregiously negligent behavior to be directly attributed to a person who acted as the company's managing director. But under the new Act's Section 1(3), the identification concept is "further expanded to permit corporate liability to be proved by an aggregate of the cumulative conduct of a collective of top managers of a corporation."

According to Section 1 of the CMCHA, a crime is committed when an organization has a duty to reasonably ensure a person's safety under specific conditions, and how those activities have been managed or organized by the organization results in a gross violation of that duty and results in the victim's death.

A substantial aspect of the gross breach must be the way senior management handled or structured the activities of the organization in question, according to Section 1(1)(b). According to Section 2, a relevant duty in relation to an organization is any of the following duties that are owed by it under the law of negligence: a duty owed to its employees or to others who work for it or provide services for it; a duty owed in connection with the carrying out by the organization of any other activity on a commercial basis; or a duty owed in connection with the use or maintenance by the organization of any plant, vehicle, or other thing. Only if the senior management of an organization manages or organizes its activities in a manner that constitutes a substantial part of the violation described in Subsection 1 is that organization considered to have committed the offense under Section 1(3).

According to Section 1(4)(c), "senior management" refers to the individuals who have significant influence over how an organization's operations are managed or organized in their entirety or in a major portion, as well as those who actually manage or arrange such activities. If the management or organization of an organization covered by this section: (a) results in the death of a person; or (b) constitutes a gross breach of the organization's applicable duty of care owed to the deceased, then the organization is guilty of the offense. In accordance with Section 1(4)(c), "senior management" refers to both those who actually manage or arrange such activities as well as those who have significant influence over how an organization's operations are managed or arranged in their entirety or in a significant portion. An organization that falls under this section's purview is guilty of the crime if its management or structure: (a) causes someone to pass away; or (b) represents a flagrant violation of the organization's applicable duty of care owed to the deceased. In other words, the jury must prove that the corporation's



actions in the given situation demonstrated a significant divergence from the usual and customary standard of care that may have been reasonably anticipated of it.

*Section 8* clarifies the framework for determining an organization's guilt by outlining various factors the jury should take into account. How serious the failure was, and how significant of a risk to life it posed, if there was one. The jury may further take into account the degree to which the evidence demonstrates the existence of organizational attitudes, rules, systems, or recognized practices that may have fostered tolerance for any failure as described in *Section 2* or may have encouraged such failure. They could also take into account any health and safety recommendations that are relevant to the alleged violation.

Secondary culpability for the new offense is specifically disallowed under *Section 18*. The concept of secondary liability states that if a person aids or abets the conduct of an offense, they may still be held criminally liable. This generally indicates that someone can be found guilty of an offense if they encouraged, advised, or procured it. However, *Section 18* specifically states that "an individual cannot be guilty of aiding, abetting, counseling or procuring the commission of the offense of corporate manslaughter, culpable homicide or health and safety offences, where the relevant elements of those offences are made out." This clause prevents an individual from being held accountable for the new offence on this basis. In accordance with *Section 1(6)*, a corporation that is found guilty of corporate manslaughter faces an unlimited financial fine that must be paid to the state. The court may order the creation of a remedial order against a corporation found guilty of corporate manslaughter under *Section 9(1)*. The court also has the discretionary power to order a convicted corporation to publicly announce that it has been found guilty of corporate manslaughter, failure to do so constituting a crime punishable by fine. When the remedial order is made, a company is required to take additional specific measures to remedy the cause of the breach. Since the Act's inception, sixteen prosecutions had been filed, leading to twelve convictions as of the beginning of 2015 (R v. Cotswold Geotechnical Holdings Limited). (2011) 1 Cr. App. (15 February, 2011); R. v JMW Farm Ltd (2012) NICC 17 (8 May, 2012); R. v Lion Steel Equipment Ltd T. 2011 7411 (3 July, 2012); R. v Murray (2013) NICC 15 (7 October, 2013); R. v Princes Sporting Club (2013) Westminster Crown Court, 375 (22 November, 2013); R. v Mobile Sweepers (Reading) Limited (Unreported, February 26<sup>th</sup>, 2014); R. v Cavendish Masonry Ltd (22 May, 2014); R. v Sterecycle (Rotherham) Ltd and others (7 November, 2014); R. v A. Diamond and Son (17 December, 2014); R. v Peter Mawson Limited & Peter Mawson (19 December, 2014); R. v Pyranba Mouldings Ltd (2014) EWCA Crim. 533 (12 January, 2015); R. v Nicole Enterprise (12 March, 2015).

## 1.8 CONCLUSION

Corporate crime is one of the most pressing and sensitive concerns occupying the public, the media, academia, and legal specialists at this time in Nigeria.

In this essay, an effort is made to defend the rationale behind corporate criminal liability, show how the difficult mens rea standard may be applied to corporate organizations, and propose tenable foundations for the effective implementation of corporate criminal liability in Nigeria.

Because the main criminal legislations failed to identify the offenses that can be committed by corporate entities, corporate crimes and misfeasance are more common than ever before, and it is still believed that prosecuting corporations can be relatively challenging. Large-scale losses of life and property, fraud, and other grave harm to society are frequent outcomes of these corporate crimes. The study reveals that the outcomes that have the greatest immediate impact on our society are the loss of enormous quantities of money, the vast loss of jobs, and finally, the loss of human lives.

In addition to the aforementioned repercussions, these corporate crimes also have a spiraling effect that may not be immediately evident, such as long-term effects on the environment and social fabric.

The paper makes a proposal for the swift enactment of the Nigerian Corporate Manslaughter Law or for the urgent amendment or reform of the primary criminal legislations to include corporate manslaughter as a distinct offense with distinct ingredients or elements that can be successfully prosecuted to stop the rising trend of corporate crimes.

Additionally, it is advised that capital punishment, such as winding up the corporation, be used in situations of corporate manslaughter that have been found to be particularly severe. Such severe action would effectively emphasize how serious the situation is.

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