

# Corporate manslaughter law company business partnership essay

[Experience](#), [Laughter](#)



Is it reasonable to limit corporate liability for gross negligence manslaughter particularly to senior management level? Discuss. The concept of corporate criminal liability became extremely high profile and contentious following the death or injuries of workers at work and other members of the public.

According to ----- the interest in this subject was increased as result of two set of developments firstly because there has been the series of public disasters where large number persons were being killed. For example According to the investigation into Kings Cross Underground Fire (1988) (Fennell Report): In 1987, 31 people died and 60 people were injured, where failure on part of various individual within the overall corporate structure to identify their respective areas of responsibility was declared as a cause of fire. In the subsequent year due to the negligence on part of shore management to give proper directions another major disaster took place which led to the death of 192 people. Furthermore, in 1988 there was an explosion in Piper Alpha oil Rig explosion where about 167 people were being killed as per the inquiry report it was held that overall flaw in the management was held to be the sole cause of disaster. In 2006 it was revealed that 33 people had died from C Difficile Bacterium over the period of two years at Stoke Mandeville Hospital. Over the same period this bacterium directly caused the death of 90 people and contributed to the death of further 345 people at two Kent Hospital. According to the health commission inquiry report senior managers were held responsible for serious failings. Secondly in Report after report, the HSE and its inspectorates stated that management bears primary responsibility for the 'accidents'. As per evidence HSE has stated that in 75 percent of maintenance accidents in the

chemical industry, site management was found 'wholly or partly' responsible in failing to take reasonable and practicable measures to prevent the 'accidents'. Furthermore, the management has been blamed as responsible for approximately two out of three deaths in general manufacturing and three out of five farm deaths. Moreover, 78 percent of fatal maintenance accidents in manufacturing are the consequences of criminal act of commission or omission are on part of company or organization itself. It is therefore inappropriate to avoid such criminal conduct by labeling it as an 'accident'. Such an increased publicity of the disasters that have taken place and other work related fatality cases led to the enactment of the Corporate Manslaughter and Homicide Act 2007, through which corporation could be held accountable for the injuries and death that might take place in future. However before coming directly the point that How Act 2007 holds corporation liable, it is first important to discuss how law prior to the enactment of Act 2007 has been dealing with different rules in holding corporation criminally liable. What were the flaws in the rules which led to the overall reform in law? In today's world much of our lives are affected by the conduct of organization or corporation as for example we work for them under the condition that may be hazardous to us, we use their products which might be injurious to our health, subsequently, we breath the air which may be affected of their discharged fumes and finally we may travel in their ferry or trains which might be risky. The fundamental question is then who should be blamed for the deaths or injuries caused to the employees under work? Is it just sufficient to claim the corporation criminally liable? Or rather one should seek to punish individuals within the company? According to Lord

McNaughton; " The company at law is a different person in general from the subscribers to the Memorandum [shareholders] and although the companies structure after the incorporation of the business is precisely the same as it was before, for example there may be same managers and the same hands might be receiving the profits, the company therefore is not in law the agent of the subscribers or a trustee. Nor its subscribing members are liable in any shape or form, except to the extent and in the manner provided by the Act"[1]. There, therefore arises no reason why shouldn't a company be then liable for the deaths and injuries that have taken place there under? The fact is that organizations are blamed in their capacity as organizations for causing harm or taking risk in circumstances where they could have acted differently because the organization is the system itself not the aggregation of individuals. " We often react to corporate offenders' not as impersonal harm producing force but as responsible, blameworthy entities. The individuals who are blaming corporation are not pointing the fingers at individuals behind the corporation. But they are rather condemning the organization that either implemented the wrong policies or failed to exercise its collective capacity to avoid the offence for which they being blamed"[2]. Another factor that tend to hold corporate liable is that, in certain circumstances prosecuting individuals may ignore " the corporate pressure that might have been placed upon an individual employee and such pressure still remains even after the individual has been sacrificed"[3]. Therefore, according to " National River Authority v. Alfred Mc Alpine Homes East Ltd. [1994] 4 All E. R 286 (Queen's Bench Divisional Court)"; as long as the (an) individual during their course of employment has committed a crime,

company should be held (vicariously) liable, as it prevents the company from protecting itself from criminal liability by delegating potential illegal action to its employees. Nevertheless, the problem with the vicarious liability is that, it is both over-inclusive and under inclusive. It is Over-inclusive because " Even if there is an individual liability, corporate liability also follows despite the absence of fault on part of corporation. The general objection to vicarious liability under criminal law is that it divorces the determination of liability from an inquiry into overall culpability"[4]. On other hand it may be argued that, the fact that companies may be held criminally liable, does not mean that the individual within the company with appropriate mens-rea and subsequently with the actus reus should be exempted from liability. Because according to Lord Reid, in *Tesco Supermarket Ltd v Nattrass* [1972]; " A living person has a mind which can have knowledge or intention or be negligent and has hands to carry out his intention. A corporation has none of these; it must be acted through living persons, though not always one or the same person. The individual at that time is not acting for the company but rather is acting as a company and his mind which directs his mind is the mind of the company. Therefore there is no question for the company to be vicariously liable alone". The alternate remedy through which both the company and individual can be held liable is through " Doctrine of Identification" by virtue of which the courts ' lift the veil' of the company to see if there is any individual who along with required mens rea and actus reus had committed the crime. " But under such doctrine it is important that such an individual must be identified as a company, whose conduct and knowledge can be attributed to the company"[5]. However, problem with the

" doctrine of identification" is that doctrine fails to accept the reality that often in certain circumstances large companies have complex structure which somehow makes it difficult for the stranger to ascertain who exactly is responsible for particular decision and as provided under Attorney- General's Reference (No. 2 of 1999) [2000] 2 Cr. App. R. 207 (Court of Appeal, Criminal Division) where ROSE L. J stated:" Unless an identified individual's conduct is attributed to the company as gross criminal negligent, the company is not in the present state of common law liable for manslaughter". Such requirement under the doctrine has some how made a conviction for homicide extremely difficult because unless an individual who is sufficiently high in the " Hierarchy" of the company and whose acts could be said as gross negligent manslaughter along with required " Mens Rea" and " Actus Reus", a company therefore cannot be held liable. Although, the fact cannot be denied that the prosecuting individual through " doctrine of Identification" can easily secure a manslaughter conviction against small owned companies where individual manager can easily be identified as company[6], however, with larger companies it is not easy for the prosecuting individual to find a corporate officer who committed an offence which can be attributed to the company. As the doctrine of identification ignores the reality of the modern corporate decision making process. As result of such an inadequacy in law, as discussed above particularly in areas dealing with manslaughter conviction against larger companies led to the overall reform in law. As result of which Corporate Manslaughter and Corporate Homicide Act 2007 was enacted. Where according to S. 1(3): " An organization is guilty of an offence under this section, only if the way in which its activities are managed or organized

by its senior management is a substantial element in the breach which according to subsection (1): "Cause a person's death", and "Amounts to a gross breach of a relevant duty of care owed by the organization to the deceased". Such senior management according to S. 1(4)(c), means the person who play significant roles in: The making of decision about how the whole or a substantial part of its activities are to be managed or organized, or The actual managing or organizing of the whole or a substantial part of those activities." According to Ministry Of justice, Understanding the corporate Manslaughter and Corporate Homicide Act 2007 (2007), pp. 12-14: "this new approach does not require the prosecuting individual to establish failure on part particular individual or manger but rather with how an activity was being managed within the organization as a whole. However again it will not be possible to convict an organization unless a failure lay at senior management's level. Exactly who would be the member of senior management will depend upon the nature of organizations activity. Furthermore according to the report the role of senior management are likely to include regional managers in national organizations and managers at different operational division. However according to David Ormerod and Richard Taylor, "The Corporate Manslaughter and Corporate Homicide Act 2007" [2008] Crim. L. R. 589 at 593-4: instead of focusing on the responsibility on the working practices of the organization this insistence on indentifying the "Senior Management" seems unduly restrictive and threaten to open the door to endless argument in the court that whether particular individual qualify as "Senior management". In my view the new act of "Corporate manslaughter and Homicide of 2007" is the broader

version of " doctrine of identification" where again the criminal prosecution against a company or organization will only qualify if the failure which resulted into the death or injury of an individual has taken place at particular senior management level. Such limitation over the requirement of criminal prosecution has brought back the overall objective of Corporate Manslaughter to the very basic arguments that who should be held liable for the deaths and injuries that might take place at work? Is it just sufficient to claim the corporation criminally liable? Or rather one should seek to punish individuals within the company? The fact that company is a legal personality which can sue and be sued, however as discussed above an individual cannot proceed with criminal prosecution against the company because the act requires the presence of both " Actus Reus" and " Mens rea" and none of these are present in a company. This eventually leads to a conclusion that then there must some living individual who can perform on behalf of the company and just because of his criminal act company could be held liable for the deaths or injuries that have taken place and as stated above, in order to prosecute criminal liability against the organization under Act 2007, that particular individual must be part of senior management level. The fundamental point of the overall essay is whether such liability according to the new act 2007 should be particularly limited to the senior management only? In certain circumstances it is often found that although company had clear policies but certain individual managers just to secure their promotion implement short term policies or may take such decision which results into criminal acts, in such scenarios is it still justifiable to claim senior management responsible for the event that has taken place? Despite the



facts that, they have made clear policies which certain individual managers refuse to accept or failed to comply with. On other hand the act clearly states that the company will only be liable, if the way in which its activities are managed by its senior management is substantial element of the breach that has taken place, which means that if failure has taken place at the lower management level then company will not be liable. In such circumstances, again is it justifiable with the innocent prosecuting individuals that since the failure took place at lower level, the company will therefore not be held responsible for the deaths or injuries that have taken place? Furthermore, for example, an event took place at Garment factory in Karachi, Pakistan where almost 289 people were killed. As per the report all emergency as well as exit gates were locked on the order of directors of the company. Now under such scenario is it again as provided above justifiable to refuse the claim of prosecuting individual that just because there is no individual liability as provided in S. 18 of " Corporate manslaughter and Corporate Homicide Act 2007" therefore there lies no claim? If yes, then who would be liable for the deaths? Thus on the basis of above discussion although on one hand it is sufficient to claim that on one hand it is reasonable to claim senior management responsible for injuries that have taken place because it was their duty provide clear rules and take action where necessary, however on other it is also unreasonable to limit liability to senior management only because on the basis of provided examples above it would then be unfair with the innocent individuals who lost there close ones.