

Corporations and criminal responsibility

Law



- a) The employee committed the crime within the scope of his employment.
- b) That his acts were aimed at benefiting the corporation.

This means that a corporation cannot be criminally liable for acts committed by a representative outside the scope of his employment. In law, the representative would be said to have on a frolic of their own.

There is the situation however whereby a corporation cannot be accounted liable against its representative.

- a) When the crime cannot 'prima facie' be committed by the corporation for example murder.
- b) When the crime committed is a crime that cannot be punished through fines. This is due to the principle that a company cannot be jailed or even punished by corporal punishment. The only punishment available will be fine.

Criminal Penalties

The most common criminal penalty imposed against the corporation is fine. For this purpose, a corporation would be fined a certain amount of money depending on the capital nature of the crime so committed. A corporation would be fined if it commits certain acts that are punishable by fine or if the corporation tolerates the actions of its representatives.

Consequently, punishment can be imposed on the perpetrator of the crime but shared amongst other innocent parties. This will be in the form of a reduction of wages/salaries available to all employees. It also results in the reduction of profits hence dividends payable to the shareholders.

The corporation can also be punished by way of a forced winding up. The company would have to be wound up if the court is of the opinion that it is just and equitable from the surrounding circumstances. In *Re Thomas*

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Edward and Brinsmead and Sons Ltd It was held that a company would be punished by winding up on the ground that it is just and equitable if it is proved that it has carried out fraudulent activities through its representative.

In conclusion, therefore, a corporation can be held criminally liable for the acts of its representatives. From the principal-agency relationship, an agent is presumed to be acting on behalf of his principal and his acts will also be presumed to have been committed by the principal. However, for the principal (Corporation) to be held liable, the agent (representatives) must have acted within their scope. The agreement violated federal antitrust laws. The corporation shall be liable.