A CRITIQUE OF THE NATURE AND SCOPE OF CORPORATE CRIMINAL LIABILITY IN NIGERIA

ODORO CHINECHEREM MARYCYNTHIA
GOU/U21/LAW/412

FACULTY OF LAW
GODFREY OKOYE UNIVERSITY
ENUGU STATE

JULY, 2026

A CRITIQUE OF THE NATURE AND SCOPE OF CORPORATE CRIMINAL LIABILITY IN NIGERIA

ODORO CHINECHEREM MARYCYNTHIA
GOU/U21/LAW/412

A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, THINKERS CORNER, ENUGU, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF GODFREY OKOYE UNIVERSITY

ENUGU, ENUGU STATE

SUPERVISOR: DR. CYRIL NKOLO

JULY, 2026.

DECLARATION

I, Odoro Chinecherem MaryCynthia, do hereby declare that this long essay titled Nature and Scope of Corporate Criminal Liability in Nigeria, was done by me in the Faculty of Law, Godfrey okoye University. All sources of this work has been duly recognized in the test and a list of preference has been provided. This work is original and has not been presented elsewhere in part or in full for the award of any Degree in this institution or in any other Institution.

______________________________ ______________________________

ODORO CHINECHEREM MARYCYNTHIA **DATE**

GOU/U21/LAW/412

CERTIFICATION

This is to certify that this study titled The Nature and Scope of Corporate Criminal Liability in Nigeria was carried out by Odoro Chinecherem MaryCynthia, an undergraduate student in the Faculty of Law, Godfrey Okoye University with the Registration Number GOU/U21/LAW/412, under the supervision of Dr. Cyril Nkolo in partial fulfilment of the requirements for the award of Bachelor of Laws (LL.B) Degree.

______________________	______________________
DR. CYRIL NKOLO	**DATE**
SUPERVISOR	
______________________	______________________
DR. GEOFFREY OKECHUKWU OMEH	**DATE**
DEAN, FACULTY OF LAW,	
GODFREY OKOYE UNIVERSITY	
______________________	______________________
EXTERNAL EXAMINER	**DATE**

DEDICATION

I am dedicating this work to the Almighty God, who is the pillar of my life and the source of my strength and to me, who despite the adversities, persevered through to the end.

ACKNOWLEDGEMENTS

Like it is said, no man is an island. During the course of this academic writing, a lot of people have been by my side offering both intellectual, emotional, mental and most importantly, financial assistance and I will like to express my profound gratitude to them.

I am grateful to God who has, through his divine grace and mercy, kept me alive and sane during this difficult period of my life.

It is the joy of every parent to see their child succeed and to do everything in their power to provide the best for their child. On this note, my deepest and heartfelt appreciation goes to my Mother, Mrs Odoro Ijeoma who despite my transgressions, has never let me face this alone. Her advice, recommendations, words of encouragement has a been a great source of help to me and I cannot thank her enough.

Secondly, I thank my supervisor, Dr. Cyril Nkolo for his patience, advice, corrections and guidance throughout the course of this project. He showed me why he is the best in this field of study and I am extremely grateful to him.

Thirdly, I want to appreciate my siblings and extended family who has contributed and ensured that my stay in university has been seamless.

Finally, I thank my friends, Okechukwu Favour and Egbe Cyril, who has been with me in every step of the way and assisting in their various capacity. Thank you so much.

TABLE OF CONTENT

LIST OF CASES

LIST OF STATUTES

Administration of Criminal Justice Act, 2015, No. 3, 2015 (Nigeria)

Advance Fee Fraud and Other Fraud Related Offenses Act, Cap A6, Laws of the Federation of Nigeria, 2004

African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

Australian Criminal Code Act 1995 (Cth)

Banks and Other Financial Institutions Act, 2020, No. 5, 2020 (Nigeria)

Companies and Allied Matters Act, 1990 (Nigeria)

Companies and Allied Matters Act, 2020, No. 3, 2020 (Nigeria)

Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria, 2004

Corrupt Practices and Other Related Offences Act, 2000, No. 5, 2000 (Nigeria)

Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004

Cybercrimes (Prohibition, Prevention, etc.) Act, 2015, No. 1, 2015 (Nigeria)

Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, Pub. L. 111-203 (US)

Economic and Financial Crimes Commission (Establishment) Act, 2004, No. 1, 2004 (Nigeria)

Economic Crime and Corporate Transparency Act 2023, c. 36 (UK)

Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004

Harmful Wastes (Special Criminal Provisions) Act, Cap H1, Laws of the Federation of Nigeria, 2004

Interpretation Act, Cap I23, Laws of the Federation of Nigeria, 2004

Malabo Protocol on the Statute of the African Court of Justice and Human Rights, 2014

Miscellaneous Offences Act, Cap M17, Laws of the Federation of Nigeria, 2004

Money Laundering (Prohibition) Act, 2011, No. 1, 2012 (Nigeria)

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007, No. 25, 2007 (Nigeria)

Nigerian Extractive Industries Transparency Initiative Act, 2007, No. 8, 2007 (Nigeria)

Penal Code Act, Cap P3, Laws of the Federation of Nigeria, 2004

Petroleum Industry Act, 2021, No. 3, 2021 (Nigeria)

Public Procurement Act, 2007, No. 14, 2007 (Nigeria)

Rome Statute of the International Criminal Court, adopted 17 July 1998, 2187 UNTS 90, entered into force 1 July 2002

Sarbanes-Oxley Act 2002, Pub. L. 107-204 (US)

UK Bribery Act 2010, c. 23

UN Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31, 2011

LIST OF ABBREVIATIONS

CAMA	Company and Allied Matters Act
NESREA	National Environmental Standards and Regulation Enforcement Agency
FIRS	Federal Inland Revenue Service
EFCC	Economic and Financial Crime Commission
ACJA	Administration of Criminal Justice Act.

ABSTRACT

This research undertakes an in-depth examination of the nature and scope of corporate criminal liability in Nigeria, defining the theoretical foundations and practical application of this body of law against the background of confusion between corporate personality and the traditional criminal law concepts of actus reus and mens rea. It further traces the evolution of this principle from the earlier English law decisions in 1944 to the present provisions of CAMA 2020 and examines the various models that attribute liabilities to corporate institutions. This research exposes that the identification doctrine of liability attributed to a company's "directing mind and will" is insufficient for modern decentralized corporations, creating an enforcement gap amplified by limited prosecutorial capacity and inadequate sanctions. It also examines the liability of corporations in relation to offences such as tax evasion, environmental offences, and financial crimes, and the growing attitude of Nigerian societies seeking redress in foreign courts. This occurs as a result of the weakness of Nigeria's legal framework pertaining to company liability and enforcement. This research encourages the adoption of broader attribution principles, adequate prosecutorial capacity and guidelines. The methodology employed in this research is a doctrinal method where both primary and secondary sources of law are analyzed. The results show that Nigeria's restrictive identification doctrine, weak penalties, and limited enforcement capability have contributed to the creation of a great accountability gap, leading to plaintiffs seeking remedies in foreign jurisdictions. This research suggests greater attribution systems, sentencing recommendations, courts of specific jurisdiction, and greater prosecution capabilities.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study

As one begins to analyse the discourse surrounding corporate criminal liability in Nigeria, one is immediately caught in a compelling and intriguing tapestry that speaks of Nigeria's colonial legal origins, her post-independence travails with corruption and governance and the burgeoning pressures of a 21st century global economy. Traditional Nigerian criminal law, akin to its English antecedents, revolved around the premise of personal criminal liability, an idea that created a formidable barrier to the application of criminal culpability on corporate bodies. According to Okonkwo and Naish [1] It was noted that the scope of corporate criminal liability in Nigeria had hitherto been obscure and it was never judicially ascertained.

Nigerian corporate law is built around the well-known English case of Salomon v Salomon & Co Ltd [2], Is there a legal differentiation between the company, the individuals who are the owners of the company as well as the directors and officers. That difference has now been incorporated into the provisions of Section 42(1) of the Companies and Allied Matters Act (CAMA) 2020 [3], Establishes that on incorporation a company shall be a body corporate by the name contained in its memorandum, with perpetual succession and power to sue and be sued in its corporate name[4], That there is a legal distinction between a company, and the individual owners, directors and officers of the company, which have now been enacted into Section 42(1) of the Companies and Allied Matters Act (CAMA) 2020 [5], Establishes that on incorporation a company shall be a body corporate by the name contained in its memorandum, with perpetual succession and power to sue and be sued in its corporate name.[6] Though the formation of legal

---

[1] CO Okonkwo and ME Naish, *Criminal law in Nigeria*, (2nd edition, Sweet and Maxwell, London, 1980) 127.
[2] (1897) AC 22 (HL).
[3] Companies and Allied Matters Act 2020, s 42.
[4] (1897) AC 22 (HL).
[5] Companies and Allied Matters Act 2020, s 42.
[6] *Intercontractors Nig. Limited v NPF Management Board* (2004) 18 WRN 1 at 35.

personality has helped business to grow without holding owners personally unlimited liable it has posed another crucial question as to how the person which does not have a physical body and no emotions or any intent can be considered guilty or responsible under the criminal law.[7] Before CAMA 1990 was enacted in Nigeria, corporate criminal liability under Nigerian law was derived solely from judicial precedents.[8] There is no special provision on criminal liability of companies as distinct from the liability of individual members of companies in the Criminal Code which has been in existence in the southern states of Nigeria since 1916.[9] Indeed, under the Criminal Code 'person' includes "corporations of all kinds, and any other association of persons capable of owning property" and the Penal Code used in northern Nigeria contains a comparable provision that "person" includes "any company or association or body of persons, whether incorporated or not."[10] Nonetheless, Iyidobi notes that as per these definitions, corporations can generally be liable for offences listed in criminal legislation. Nevertheless, "it do not make any provisions on how corporations are to be held liable for these offences," she points out.[11] "Vukor-Quarshie stated this void gave rise to what could be called "a veritable jungle of conjecture, uncertainty and conflict" in corporate criminal liability in Nigerian law.[12] In the absence of certainty the Nigerian courts tended to rely heavily on principles of common law enunciated in the English courts.[13] As Berkeley J. observed in *R v Anglo Nigerian Tin Mines Ltd* (1930)[14], "Clearly it is the company who is alleged to have offended against the

---

[7] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria'. *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 6.
[8] Company and Allied Matters Act 1990.
[9] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004, s 14 to 20.
[10] Criminal Code Act, Cap 123, Laws of the Federation of Nigeria 2004, s 18; Penal Code Act, Cap P3 Laws of the Federation of Nigeria 2004, s 2.
[11] CN Iyidobi, 'Rethinking the Basis of Corporate Criminal Liability in Nigeria', *The Nigerian Juridical Review*, (2015) (13) 112.
[12] GN Vukor Quarshie, 'Corporate Criminal Liability: An Additional Chapter to the Criminal and Penal Codes of Nigeria', *Jahrbuch fur afrikanisches recht*, (1981) (2) 141-158.
[13] CO Okonkwo and ME Naish, *Criminal law in Nigeria,* (2nd edition Sweet and Maxwell, London, 1980) 127.
[14] (1930) 10 NLR 69.

Mining Law. At Common Law that is an impossibility; somebody must be brought before the Court and, if necessary, placed in the dock."

A landmark change in English company criminal liability was triggered by the decisions of DPP v Kent and Sussex Contractors Ltd, R v I.C.R. Road Haulage Ltd, and Moore v Bresler, decided in 1944[15], which turned corporate liability for crimes that requiredmens reaon its head. The position began to change in Nigeria, and corporate liability came to be accepted by the courts for offences like seditious publication (as *in R v Zik Press, African Press Ltd v. R, Service Press Ltd v AG and R v Amalgamated Press Ltd.*)[16] The most outstanding case in this regard is *AG (Eastern Nigeria) v. Amalgamated Press*[17], Wherein the court declined to uphold the position that corporate criminal responsibility is an impossible concept, on the ground that mens rea can never be attributed to a corporation. The passage of the Companies and Allied Matters Act, 1990 (and then the CAMA 2020), therefore, was supposed to heralded in an era of more tightly regulated corporate operations and provide an answer to the nagging questions regarding corporate criminal liability.[18] According to Section 89 of CAMA 2020, the acts of the members in general meeting, of the Board of Directors, or of the managing director when transacting the business of the company shall be regarded as the acts of the company itself, and the company shall be guilty and liable to prosecution in civil and criminal proceedings where need arises, as it would have been if it were a natural person.[19] Section 90 further provides for circumstances where officers and agents of the company will be liable either directly or vicariously.[20]

---

[15] *DPP v. Kent and Sussex Contractors Ltd* (1944) KB 46; *R v. I.C.R. Road Haulage Ltd* (1944) KB 551; and *Moore v. Bresler* (1944) All ER 515.

[16] *R v. Zik Press* (1947) 12 WACA 202*; African Press Ltd v. R* (1947) 12 WACA 206*; Service Press Ltd v. AG (1959)* 4 FSC 33*; and R v. Amalgamated Press Ltd* (1961) 2 All NLR 113.

[17] (1956- 1957) 1 ERNR 18.

[18] Company and Allied Matters Act 1990; Company and Allied Matters Act 2020.

[19] Company and Allied Matters Act 2020, section 89.

[20] Company and Allied Matters Act 2020, section 90.

Even with these statutory measures in place, the Nigerian model faces serious problems. There are numerous objections to the identification doctrine, where liability is imputed for the actions of the company's 'directing mind and will', with the view that it fails to effectively deal with the corporate behaviour of massive, complex corporations.[21] As Onyewuchi noted, "apart from the instances of strict liability offences, the criminal liability questions of imputations by doctrines of actus reus and mensrea" are gravely questionable and there "is no applicable theory for assessing the mens rea of corporations".[22]" The Supreme Court's decision in *Adeniji v. The State*[23] It is considered the most thorough analysis of the notion of corporate criminal liability in Nigeria particularly regarding the liability of the officers of a corporation. The enduring problems associated with the enforcement of corporate criminal liability in Nigeria are aggravated by the ubiquity of corporate crime.[24] The majority of fraud committed by people in government is accomplished by taking the guise of companies and their existing organizations, or companies established to conduct these frauds.[25] The posture of organs of state in addressing the prevention of and prosecuting white collar crimes has been characterised as " lukewarm" and corruption, so rampant in the Nigerian society, is identified as both " the offspring and the daughter" of the indifferent approach to white collar crime.[26] This has resulted in the danger of the law on corporate criminal liability "falling into desuetude."[27]

Nigeria has also had its recent spate of attention on corporate responsibility. The trans-national litigation against Shell Plc and Nigerian operating company has challenged the doctrine of separate legal personality and altered conceptions of corporate responsibility.[28] In June 2025,

---

[19] NA Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions,' *Law, Business and Business Justice Journal,* (2025) (2) (2) 58.

[22] Ibid, p.48.

[23] (1992) 4 NWLR (Pt. 234) 248.

[24] Iguh & Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 12.

[25] CO Okonkwo and ME Naish, *Criminal law in Nigeria*, (2nd edition, Sweet and Maxwell, London, 1980) 127.

[26] Ibid.

[27] GN Vukor Quarshie, 'Corporate Criminal Liability: An Additional Chapter to the Criminal and Penal Codes of Nigeria', *Jahrbuch fur afrikanisches recht, (*1981) (2) 155.

[28] Ogale & Bille v Shell Plc and SPDC (UK High Court, June 2025)

the UK High Court delivered a landmark decision in *Ogale & Bille v Shell Plc and SPDC*[29], Ruled that the parent company of Shell Plc, a U.K.-based multinational, can be sued along with a former subsidiary for the long-running oil spills that plague Nigeria's oil-rich Niger Delta. The decision follows an April U.K. Supreme Court ruling in Okpabi v Royal Dutch Shell Plc,[30] Shows that the judiciary are not reluctant to spread liability across state borders and to review parent companies' influence over the operations of their subsidiaries.

This pattern in these cases indicates how Nigeria's domestic enforcement frameworks, that remain limited, have lead some Nigerian citizens and communities towards seeking remedy from foreign jurisdiction.[31] This trend demonstrates increasing globalization of corporate human rights lawsuits, and the imperative for Nigeria to reinforce and harmonize its regulations, under the framework of the Petroleum Industry Act 2021, National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007 and other environmental laws.[32]

Nigerian law has kept pace in other ways – through a body of legislation based on sectors that have corporate criminal liability.[33] For example, while corporate criminal responsibility is provided for in Money Laundering (Prohibition) Act, the Corrupt Practices and Other Related Offences Act, the Cybercrimes (Prohibition, Prevention, etc.) Act 2015, the Public Procurement Act 2007, and the Nigerian Extractive Industries Transparency Initiative Act 2007, it comes with sanctions such as fines, winding up and forfeiture of assets.[34] Section 19(2) of Money Laundering (Prohibition) Act provides that where a body corporate is found guilty

---

[29] Ibid.

[30] (2021) UKSC 3.

[31] Ibid, per Lord Hamblen at paragraph 45.

[32] Petroleum Industry Act 2021; National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007.

[33] NA Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions,' *Law, Business and Business Justice Journal,* (2025) (2) (2) 50.

[34] Money Laundering (Prohibition) Act (2011) as amended; the Corrupt Practices and Other Related Offences Act 2000; the Cybercrimes (Prohibition, Prevention, etc.) Act 2015; the Public Procurement Act 2007; and the Nigerian Extractive Industries Transparency Initiative Act 2007.

of an offence, the court can order its liquidation, and its properties and assets should be forfeited to the Federal Government.[35]

However, the application of criminal liability to a body corporate in Nigeria has been difficult due to some legal anomalies, lack of Prosecuting capacity as well as inferring intention for such bodies.[36] As Iguh and Ibe [37] As, 'although Nigerian law provides for criminal corporate liability, the enforcement thereof is problematic and the punishments imposed on companies in these circumstances lack deterrent impact especially where large corporations are concerned' observed that "corporations" as an element is quite central. Nigerian law for instance, at present is found to at a "critical juncture" where corporate criminal liability is concerned.[38] The country's legal framework has developed substantially since its colonial inception, but wide deficiencies remain in allocating corporate criminal liability, imposing liability and ensuring that Nigerian law is consistent with best practices internationally.[39] Corporations' basic human rights are, meanwhile, enforced; yet, still subject to their continued enjoying of the all rights civil, and also escaping certain parliamentary control over their criminality.[40] This calls for an investigation into the nature and boundaries of corporate criminal liability in Nigeria and also address and put forth reforms needed to hold companies more accountable for the activities, so as to stimulate sustained development.[41]

1.2 Statement of the Problem

[35] Money Laundering (Prohibition) Act 2011 (as amended), section 19(2).

[36] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 5.

[37] Ibid, p.16.

[38] NA Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions,' *Law, Business and Business Justice Journal, (2025) (2) (2) 55.*

[39] CO Okonkwo and ME Naish, Criminal law in Nigeria, (2nd edition, Sweet and Maxwell, London, 1980) 127,

[40] CN Iyidobi, 'Rethinking the Basis of Corporate Criminal Liability in Nigeria', *The Nigerian Juridical Review*, (2015) (13) 120.

[41] NA Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions,' *Law, Business and Business Justice Journal*, (2025) (2) (2) 42.

The corporate criminal liability problem in Nigeria represents an acute and an all-pervading difficulty arising from the central conflict between the legal fiction of the company and the practical reality of seeking to bring such an abstract entity into responsibility for criminal behaviour.[42] At the heart of this debate lies the attempt to bridge the divide between the separate legal personality of a company (which is the norm in law as enacted in the Company and Allied Matters Act 2020, CAMA 2020) and the common law criminal requirements of actus reus (guilty act) and mens rea (guilty mind) which were evolved in respect of natural persons.[43]

It is evident the "Identification doctrine" which holds the identification of the acts of the company to the "directing mind and will" as solely responsible has been and increasingly fails, in complex modern and decentralised organisations in terms of where responsibility lies.[44] To exacerbate the lack of doctrinal coherence, the courts are more conservative; they have less experience or the capacity and ability to prosecute; fines, when they exist at all, usually pose little threat to a massive company.[45] In conclusion, Nigeria is in a legal mire in the area of holding corporations liable for crime. There is little in the law to provide against this, while, in most cases, a most offending entity would go scot-free in our efforts to establish criminal intention, since this process itself is laced with more than enough procedures and obstacles for the prosecution.

The struggle has been obvious in other widely publicized examples, including the inquiry into *Oceangate Engineering Oil and Gas Limited.* [46] ...to alleged diversions of illegal earnings to the purchase of oil blocks speaks to the problem of discerning corporate versus individual actions. The growing phenomenon of Nigerian communities initiating legal actions in foreign

---

[42] NA Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdiction' *Law, Business and Business Justice Journal* (2025) (2) (2) 58.

[43] Company and Allied Matters Act 2020, section 42.

[44] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 5.

[45] Olaoluwatofunm Bamgbose, 'An Evaluation of the Theoretical Basis of Corporate Criminal Responsibility for Corporate Killings in Nigeria' *University of Ibadan Law Review* (2022) (12) (1) 130-144.

[46] Oceangate Engineering Oil & Gas Ltd <https://oceangateoilandgas.net> accessed 9 July 2026.

jurisdictions, illustrated by the Shell Plc litigation relating to environmental degradation of the Niger Delta, speaks to the public mistrust of domestic institutions' ability to hold corporations accountable for widespread damage.[47]

The nature of the problem is both doctrinal and institutional in kind: that, the current theory of the law are poorly adapted to suit the complexities ofcorporate fault while the law- enforcement mechanisms do not support the objective of corporate criminal liability (i.e. Punishment, deterrence and restitution). It follows from this problem statement thatthe central challenge is for the Nigerian legal system to reformulate and expand its concepts ofcriminal liability, jettison the old- and inadequate- identification doctrine to make the way formore encompassing concept such as ' vicarious liability'or 'aggregation theory'so as to make corporation responsible for their total criminality and cultivate a system of Corporate responsibility as a platform for sustainable growth.[48]

1.3 Research Questions

The questions that bother the researcher which this study intends to address are as follows;

1. What is the conceptual nature of corporate criminal liability?
2. What are the principal doctrines and models for attributing criminal liability to corporations?
3. What is the appropriate scope of corporate criminal liability? This question considers the range of offences for which corporations may be held liable, the types of sanctions applicable to corporate offenders, and the jurisdictional reach of corporate criminal law.

[47] *Ogale & Bille v Shell Plc and SPDC* (UK High Court, 2025) (Unreported); *Okpabi & ors v Royal Dutch Shell Plc & anor* (2021) UK Supreme Court 3.

[48] Olaoluwatofunm Bamgbose, 'An Evaluation of the Theoretical Basis of Corporate Criminal Responsibility for Corporate Killings in Nigeria,' *University of Ibadan Law Review* (2022) (12) (1) 130-144.

4. What are the practical and theoretical challenges in prosecuting corporate crime? This question examines the obstacles to effective enforcement, including evidentiary difficulties, the problem of "too big to jail," and the collateral consequences of corporate prosecutions.

1.4 Aims and Objectives of the Study

This study's main purpose is to present an in-depth description of the nature and scope of corporate criminal liability in Nigeria.

Outlining from the above established premise, the object of the research areas follows;

1. (1) To critically analyse the philosophical foundations of corporate criminal liability, specifically the doctrines of corporate personality and attribution, and to test the compatibility of those doctrines with general principles of criminal responsibility.
2. 2. To compare the main models of corporate criminal liability such as identification, vicarious and strict liability that exist in various jurisdictions and discuss their strengths and weaknesses.
3. To explore the scope of corporate criminal liability, including the range of offences for which corporations may be held accountable, the types of sanctions available, and jurisdictional issues.

4. Identify and analyze the practical and theoretical problems in the prosecution of corporate crime, including problems of proof, enforcement capacity and collateral consequences.

1.5 Scope and Limitations of the Study

This research concerns the nature and extent of corporate criminal liability: it considers how corporate criminal liability works and on what principled foundations it is built.

The study has the following shortcomings. (a) The study does not offer an exhaustive analysis of the law across all jurisdictions, rather limiting itself to several chosen common law systems for comparison. (b) The study includes an analysis of the corporate international criminal liability but is not primarily devoted to this question. (c) The study is purely doctrinal; it is based on law sources (statute law, case-law, literature) and no empirical investigation on enforcement measures will be carried out. (d) A full analysis of regulation in other relevant areas, i.e., banking, insurance, extraction industry, is outside the scope of the study even if this might be evoked on a case-by-case basis.

1.6 Research Methodology

The approach adopted by this research is doctrinal approach which is apt in a research focused on the legal, principles, policies and doctrines relating to corporate criminal liability.[49] The research work relies on primary sources and secondary sources such as The Constitution, Company and Allied Matters Act (CAMA) 2020, Criminal code, Penal code, relevant Nigerian laws, journals, textbooks, articles and newspaper publication.

1.7 Literature Review

The modern doctrine of corporate criminal liability represents a significant transformation from initial philosophical arguments to our present notion of the criminal corporation.[50] Initial studies have traditionally concentrated upon the argument, made memorable by Lord Thurlow's statement that a corporation "has no soul to damn and no body to kick," that as corporations lack the characteristics of moral agents, it is conceptually impossible to punish them criminally.[51] This was an illustration of the traditional approach where the liability in criminal law is seen as an individual liability based on the actus reus and mens rea which were conceived for natural persons and not really for juristic persons.[52] The theoretical tension between traditional principles of criminal law and practical imperatives

---

[49] 1 Nalt, Uniform Format and Citation Guide for Legal Research Writing in Nigeria (2023) 27.

[50] NA ONYEWUCHI, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal*, (2025) (2) (2) 48.

[51] NA Iguh, & KC Ibe 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria'. *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 5; A Foerschler, 'Corporate Criminal Intent' *California Law Review,* (1990) (78) 1286.

[52] EC Nkolo. 'Challenges of Corporate Criminal Liability in Nigeria'. *International Journal of Comparative Law and Legal Philosophy,* (2021) (3) (3) 54-63.

to regulate corporate behaviour have shaped the form and evolution of corporate criminal liability.[53]

The foundation of corporate criminal liability lies in the doctrine of corporate personality, established in *Salomon v Salomon & Co Ltd*[54], Where the House of Lords stated that a company has a separate legal personality from that of its shareholders and directors. This same doctrine is enshrined in Nigeria by section 42(1) of the Companies and Allied Matters Act (CAMA) 2020.[55] One thing to note about corporate personality, that was pointed out by a variety of experts was how it allows a company to operate as a corporate being with legal rights in civil law, however, in criminal law, the consequences were much more unclear and had been complicated in the courts concerning how to criminalise a company, a body which does not have a physical existence or intent of its own.[56] There are three basic corporate criminal liability models described in the literature - namely the identification doctrine, vicarious liability and the organisational model.[57] The identification doctrine-which restricted culpability to the deeds of the 'directing mind and will' of the company-has been criticised as having resulted in the large, dispersed company becoming, in practice, unprosecutable.[58] Nigerian scholars have observed that most of Nigerian legislature and Case laws have not yet recognised the position that a corporation may be liable to commit the offence for example by reason of its mens rea.[59] The vicarious

[53] Dsouza & Schmitt-Leonardy. *Old and New Tracks for Corporate Criminal Liability* (2025) (3) 179-219.
[54] [1897] AC 22; EC Nkolo, 'Challenges of Corporate Criminal Liability in Nigeria'. *International Journal of Comparative Law and Legal Philosophy,* (2021) (3) (3) 54-63.
[55] Companies and Allied Matters Act 2020, section 42(1).
[56] EC Nkolo. 'Challenges of Corporate Criminal Liability in Nigeria'. *International Journal of Comparative Law and Legal Philosophy,* (2021) (3) (3) 54-63
[57] G Shajobi-Ibikunle & DOS Oseghale, *Artificial Intelligence and Corporate Criminality* (2025) LexScriptio, (2) (2), 150-165; Dsouza & Schmitt-Leonardy, *Old and New Tracks for Corporate Criminal Liability* (2025) (3) 179-219.
[58] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153; NA ONYEWUCHI, ''Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions', *Law, Business and Business Justice Journal,* (2025) (2) (2) 48.
[59] EC Nkolo, 'Challenges of Corporate Criminal Liability in Nigeria'. *International Journal of Comparative Law and Legal Philosophy*, (2021) (3) (3), 54-63.

liability model, dominant in the United States, imputes the acts and intent of any employee acting within the scope of employment to the corporation, though it has been criticised for imposing liability without demonstrating corporate fault.[60] Responsibility is also assigned under an organisational model-used in Australia-by 'corporate culture' or 'corporate policy,' and Nigerian academics have proposed adopting such a model in Nigeria.[61] The modern scholarship is no more just on traditional or newly-recognized problems but it has now even grappled with issues surrounding AI and have Shajobi-Ibikunle & Oseghale (2021) showing that it’s hard for existing doctrines to hold for AI decisions and advocated for stronger compliance requirements coupled with some hybrid models of liability.[62] The scope and ambit of the Nigerian framework of corporate criminal liability has extensively been discussed in literature.[63] The Criminal Code provides no specific regulations with regard to the criminal liability of corporate bodies therefore criminal offences capable of being committed by corporate bodies are not specifically outlined in the criminal laws of Nigeria.[64] Others, though, have countered that, because the Criminal Code says "Any person", and that a corporation is a 'person', corporations can be prosecuted.[65] This interpretation has been supported by judicial decisions, including *Abacha v Attorney General of the Federation*, where the court held that a company can be prosecuted as if it is a natural person.[66] Ogunlade analysed the legal duties of directors and concluded that the chief piece of criminal legislation (which is concerned with prevention of crime) should

---

[60] *New York Central & Hudson River Railroad Co. v. United States*, 212 U.S. 481 (1909); Dsouza & Schmitt-Leonardy, *Old and New Tracks for Corporate Criminal Liability* (2025) (3) 179-219.
[61] NA ONYEWUCHI, ‘Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions’ *Law and Business Justice Journal*, (2025) 48.
[62] G Shajobi-Ibikunle & DOS Oseghale, *Artificial Intelligence and Corporate Criminality* (2025) LexScriptio, (2) (2), 150-165.
[63] NA Iguh & KC Ibe, ‘An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria’ *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 5.
[64] EC Nkolo, ‘Challenges of Corporate Criminal Liability in Nigeria’. *International Journal of Comparative Law and Legal Philosophy*, (2021) (3) (3), 54-63.
[65] Ibid.
[66] (2002) 6 NWLR (Pt 762) 406; EC Nkolo, ‘Challenges of Corporate Criminal Liability in Nigeria’. *International Journal of Comparative Law and Legal Philosophy*, (2021) (3) (3), 54-63.

incorporate corporate criminal liability, in a way, by the application of persons (as defined in the criminal code) so as to expressly refer to a company.[67] Sanctions have been thoroughly analyzed in the literature, where it has traditionally been observed that the only feasible sanction available to companies was a fine and assuming they act rationally, it can be said that fines are supposed to make corporate crimes unprofitable.[68] However, fines are often rendered ineffective through the "deterrence trap," where the fine necessary to deter conduct exceeds what the corporation can pay.[69]

Iguh and Ibe determine that fines on corporations seldom serve the purpose of deterrence when dealing with substantial companies, therefore proposing a better framework of law, a more successful method of prosecution, and harsher penalties including corporation probation and director banning.[70]

By contrasting the laws it can be noted that even though the Nigerian law, through the CAMA 2020 and some other enactments are developing to catch-up with other jurisdiction and model like the Australia Law, the actual implementation and execution in practice can be seen as a bit slower.[71] United Kingdom's "senior manager" approach contrasted with U.S. Vicarious liability. In 2023, the United Kingdom adopted a new “senior manager” approach to holding companies accountable in the Economic Crime and Corporate Transparency Act 2023, but the United States remains committed to the vicarious liability approach.[72] Both the English legal system, as stated in Dsouza and Schmitt-Leonardy, easily applies criminality, and German law, as a opposed system but not in the past but

---

[67] FZ Ogunlade ‘Criminal responsibilities of directors’ *African Journal of Law and Criminology*, (2023) (13) (2), 9-30.

[68] NA Iguh & KC Ibe, ‘An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria’ *Nnamdi Azikiwe University Journal of Commercial and Property law* (2025) (12) (4) 1-18.

[69] Ibid.

[70] Ibid.

[71] NA ONYEWUCHI, ‘*Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions’ Law, Business and Business Justice Journal,* (2025) (2) (2) 48.

[72] Economic Crime and Corporate Transparency Act 2023 (UK).

evolving as a modern law in allowing criminal law to be used in relation to corporate criminality as well.[73]

Interest in Corporate Criminal Liability in International Law has increased significantly De Tommaso examines the potential to create corporate criminal liability in the international criminal arena.[74]

Even though Rome Statute restrict jurisdiction to the natural persons; post-1998 events including the Malabo Protocol that stipulates that the corporation can be hold liable for core international crimes are still progressing with this discussion.[75] The concept of "failure to prevent" offenses also marks an important shift to the doctrine of strict corporate liability.[76]

However, a review of literature found that some gaps can be filled in with further work, such as: "empirical study on prosecutorial patterns and sentence of crimes in Nigeria; "empirical study on how Nigerian laws reflect international conventions; and "effects of new technologies on corporate criminal liability."[77] The study therefore attempts to fill these voids through a detailed examination of the character and extent of corporate criminal liability with special reference to Nigeria.[78]

---

[73] Dsouza & Schmitt-Leonardy, *Old and New Tracks for Corporate Criminal Liability* (2025).
[74] De Tommaso, A. (2024). *Corporate Liability and International Criminal Law*. Routledge
[75] Malabo Protocol, Art 46C; E Van Sliedregt,' The future of international criminal justice is corporate'. *Journal of International Criminal Justice*, (2025) (23) (1) 17-26.
[76] M Hunting & M Lace, *Extension of corporate criminal liability in the UK. Westlaw Today*, (2025) 24
[77] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe Journal of Contemporary Public Law, University of Nigeria* (2025) (12) (4) 160-179.
[78] Ibid.

CHAPTER TWO

CONCEPTUAL AND THEORITICAL FRAMEWORK

2.1 CONCEPTUAL FRAMEWORK

A coporation, especially a limited liability company, is a body corporate being formed by legal authority having an existence separate and apart from its members. In Nigerian law, the notion of separate corporate personality is established by virtue of section 42(1) of Company and Allied Matters Act(CAMA) 2020, it stated: "From the date of registration, each subscriber to the memorandum together with such other persons as from time to time become members, shall be a body corporate by the name contained in the memorandum".[79] Such a statute creates a jural person in the form of the company and is based upon the famous English decision of *Salomon v Salomon & Co Ltd.* [80]*,* In which it was held that the company is a legal entity distinct from its shareholders and directors.1 This corporate personality allows companies to operate as separate individuals that are entitled to rights and subject to liabilities. Thus, in civil law, this implies that a company can be party to a contract and liable in tort, can sue and be sued. However, the effect in criminal law is somewhat more problematic. The question of how to hold a legal person that does not have a physical body or intent in the human mind, criminal liability has been the cause of much concern to the judges for years.[81] Though corporations are fictional, they are composed of real people – directors, officers and employees – acting as the "brain" and the "body" of the corporation. Courts have also developed several ways to attribute criminal conduct to corporations. Among the most widely

---

[79] Companies and Allied Matters Act 2020, section 42(1).
[80] (1897) AC 22, HL.
[81] NA Iguh and KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe Journal of Contemporary Public Law, University of Nigeria* (2025) (12) (4) 160-179.

adopted approaches is the "identification doctrine" which states that the conduct and intent (mens rea) of a senior official can be imputed to the corporation.[82]

2.1.1 The Concept of Crime and Criminal Liability

A crime is either positive or negative act which is in contrary of the penal law. Crime is either the commission of an act or the omission to commit an act which is prohibited or enjoined by a public law.[83] Crime from the classical point of view has always been defined as a wrong doing that has been prohibited by law and to that it attaches criminal sanction. It is a severe violation of the law and there are two essential ingredients in criminal liability – namely, the actus reus and mens rea. It has been a long-held principle of criminal jurisprudence, expressed in the latin maxim; actus non facit reum nisi mens sit rea, which implies 'the act itself does not constitute guilt unless done with a guilty mind.[84] This need for a culpability of mental attitude makes for quite the hurdle when applying the law to corporations. Blackstone's commentary reads, "a corporation cannot be guilty of treason, or of felony, or of any other crime, because it has not a soul, and therefore cannot be excommunicated."[85] The Corporation As An Artificial Legal Person The corporate entity, as a fictitious legal person, does not possess moral agency – the prerequisite of liability in criminal offences according to a traditional view of criminal responsibility. However, in contemporary legal thought, the corporation is an entity capable of commission of offences. This has occurred, as a pragmatic acknowledgment, that although a corporation is a fictional person in the law, it possesses extensive power and control in modern society and it is desirable to deter corporate crime through criminal sanctions.[86]

---

[82] Ibid, 6.
[83] Black's Law Dictionary.
[84] Glanville Williams, *Criminal Law: The General Part* (2nd edition, Stevens & Sons 1961) 45.
[85] Sir William Blackstone, *Commentaries on the Laws of England* (1769) (1) 464–465.
[86] Celia Wells, 'The Shifting Sands of Corporate Criminal Liability' *Journal of Criminal Law* (2021) (85) (1).

2.1.2 Definition of Corporate Criminal Liability

Corporate criminal liability is described as the criminal responsibility of a corporate entity in its character of a juristic person for criminal offenses that have been carried out by its office bearers, employees, agents etc. While acting in the course of their duty or under scope of their powers/authorities. It is process where law deems to impute the actions and mind of individuals to the corporate itself and holds the latter responsible for penalties for such actions.[87] Furthermore this idea of corporate responsibility is a shift away from individual responsibility in the criminal field. Indeed, the modern corporation in order to attain criminal culpability must abandon the doctrine that criminal liability is a personal matter for individuals and rather for the sake of public interest the large corporations that exercise such an economic power have also to submit to the power of criminal law, namely to criminal penalties. The basic justification behind this idea is if the corporation is given the advantages of legal personality, namely the ability to be the owner of property and sue and be sued, then there is no reason for it not to be given its burdens, which must include criminal liability.[88]

Section 89 of CAMA 2020 states that "an act of the members in general meeting, the board of directors or a managing director done in the usual way of carrying on the business of the company shall be treated as the act of the company, and the company shall be liable therefore criminally and civilly to the same extent as though it were a natural person." It is to this legislative underpinning that Nigerian company law can look for its authority.[89]

Additionally, section 3(1) of the Miscellaneous Offences Act[90] The provides that if an offence is committed by a company, any person who was at the time of the commission of the offence

[87] Linus Hussein Ali, *Corporate Criminal Liability in Nigeria* (Malthouse Press 2009) 15.

[88] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe Journal of Contemporary Public Law, University of Nigeria* (2025) (12) (4) 4.

[89] Companies and Allied Matters Act 2020, section 89.

[90] Miscellaneous Offences Act, section 3(1).

director, manager, secretary or other similar officer of the company, or purported to act in any such capacity, shall be liable to be proceeded against and punished accordingly. The effect of this section is to create individual liability in addition to the company for an offense committed in the operations of the company.

2.2 Theoretical Framework

The theoretical foundation for the legal concept of the criminal liability of corporate bodies is a philosophical consideration of natural law theory, legal positivism, sociological jurisprudence, and the critical legal studies.

2.2.1 Natural Law Theory: The Corporation as a Moral Agent

According to the natural law theory-originating with Thomas Aquinas and elaborated by contemporary theorists like John Finnis-law must be grounded in an objective morality based on the nature of the human being and of the human community and of their good.[91] From such perspective positive laws in violation of basic morals were not "true" laws but "perversions of law."[92] Applied to corporate criminal liability, natural law theory provides a robust justification for holding corporations morally accountable.[93]

For the law to recognize moral reality, the corporation must be understood as a moral agent that is susceptible to ethical thought, deliberation and blameworthiness.[94] While a company has no conscience of its own, the sum total of its operating policies, modes of operation and corporate culture generate collectively coherent outcomes that have a significant impact on human well-being, for all the members of the organization as well as employees, consumers,

---

[91] T Aquinas (c. 1270) Summa Theologica, I-II, Q. 90, Article 1. Aquinas defines law as 'an ordinance of reason for the common good, made by him who has care of the community, and promulgated.'

[92] J Finnis, Natural Law and Natural Rights (2nd edn Oxford: Oxford University Press, 2011) 23. Finnis argues that unjust laws lack binding force, though they may still be legally valid in a positivist sense.

[93] M Velasquez, 'Debunking Corporate Moral Responsibility', *Business Ethics Quarterly* (2003) (13) (4) 531-562. Velasquez critiques corporate moral agency but acknowledges that natural law theory provides a basis for such attribution.

[94] T Donaldson, *Corporations and Morality* (Englewood Cliffs, NJ: Prentice-Hall,1982) 45. Donaldson argues that corporations are moral agents because they make decisions that affect human welfare.

communities and environment.[95] But any such corporate entity that routinely chooses profits over safety, or builds corruption into the very system in which it operates, has done something morally wrong whether or not there is an individual who is solely responsible.[96]

Scope of Liability

Natural law theory would embrace a wider 'scope of liability,' including violations of fundamental duties owed to shareholders and the greater community, not solely violations prohibited by statute.[97] Financial crimes apart, that would encompass criminal acts that constitute violations of the principles of natural law concerning justice, such as environmental pollution, labour exploitation, and involvement in human rights abuses.[98] The International Criminal Court's willingness to entertain a discussion of criminal liability for crimes against humanity as may be brought into the Malabo Protocol of 2014, reflects this natural law urge to hold the corporation liable to answer to the severest of transgressions against the moral order.[99] Those critics wonder, however, if a machine could be moral agents, worthy of condemnation, in the first place.[100] As philosopher John Dewey wrote, though collectivities have "real" effects, their "real responsibility is always exercised through individuals."[101] Thus natural law theory has to engage with the problem of the “responsibility gap” which is raised by corporate actions,

[95] PH Werhane, *Persons, Rights, and Corporations* (Englewood Cliffs, NJ: Prentice-Hall, 1985) 76. Werhane develops a "systems" view of corporate responsibility.

[96] G Moore, 'Corporate Moral Agency: A Review and Critique' *Journal of Business Ethics* (1999) (21) (4) 329-343. Moore contends that corporate culture enables collective moral responsibility.

[97] KE Goodpaster, 'The Concept of Corporate Responsibility' *Journal of Business Ethics* (1983) (2) (1) 1-22. Goodpaster argues that corporations have moral obligations that extend beyond profit maximization.

[98] J Ruggie, *'Guiding Principles on Business and Human Rights'*, UN Doc. A/HRC/17/31. (2011) These principles articulate the corporate responsibility to respect human rights, reflecting a natural law sensibility.

[99] Malabo Protocol on the Statute of the African Court of Justice and Human Rights (2014), Art. 46C. The Protocol provides for the liability of legal persons, including corporations, for international crimes.

[100] S Wolf, *The Legal and Moral Responsibility of Organizations, in NOMOS XXVII: Criminal Justice* (New York University Press, 1985) 267. Wolf questions whether corporate moral agency is conceptually coherent.

[101] J Dewey, 'The Historic Background of Corporate Legal Personality', *Yale Law Journal* (1926) (35) (6) 661. Dewey argues that corporate personality is a social reality, not a mere fiction.

and has to solve it by attributing blame to the system of organization rather than to any specific member of it.[102]

2.2.2 Legal Positivism: The Corporation as a Legal Fiction

By comparison to natural law, Jeremy Bentham's Legal Positivism (later expanded by John Austin and HLA Hart), law as positive morality and not as something that stems from moral truths is a human product. It's a matter of rule established by a sovereign authority, the rule has authority because of social facts and not because it conforms with some moral values.[103] For positivists, law is a command backed by sanctions; its validity is independent of its moral content.[104] The corporation from the positivist standpoint: a fiction of law, a creature only recognized to be when a State chooses to have it recognized in the form of legislation on corporate entities.[105] As Chief Justice John Marshall famously stated in *Dartmouth College v Woodward* (1819), a corporation is "an artificial being, invisible, intangible, and existing only in contemplation of law."[106] When we recall that it is the state which establishes the corporation, then it necessarily follows that it can prescribe any conditions which it may choose to, even that it shall be held criminal liable.[107] This theoretical approach supports the Derivative Models of corporate

[102] D Thompson, *The Problem of Many Hands, in Dennis, N.(ed.) Public Policy and the Problem of Many Hands* (Cambridge University Press, 1995) 16. The "problem of many hands" describes the difficulty of attributing responsibility in complex organizations.
[103] HLA Hart, *The Concept of Law* (Oxford University Press, 1961) 83. Hart defines law as a union of primary and secondary rules, validated by a rule of recognition.
[104] J Austin, *The Province of Jurisprudence Determined* (John Murray, Lecture I, 1832) 14. Austin defines law as a command of the sovereign, enforceable by sanctions.
[105] S Schane, 'The Corporation is a Person: The Language of a Legal Fiction', *Tulane Law Review* (1986) (61) (3) 563-609. Schane traces the legal fiction of corporate personality from Roman law to modern times.
[106] (1819) 17 US 518, at 636. Marshall's statement has become the classic judicial articulation of the legal fiction theory.
[107] J Coleman, *The Practice of Principle* (Oxford University Press, 2001) 47. Coleman argues that law is a social practice that creates statuses and obligations.

liability especially the Identification Doctrine.[108] With such approach, it's not the corporation itself as an autonomous being that commits the wrong. Instead, liability on the corporation is a reflection on its individual agents."[109] Therefore the 'nature of' such a liability is one which is not inherent or grounded in blameworthiness but rather artificial and statutory.[110]

Scope of Liability

The positivist framework dictates that the "scope" of corporate criminal liability is defined strictly by legislative command.[111] Criminal liability is not imposed upon a corporation by statute unless there is an express indication of that intention.[112] This is the principle of *nullum crimen, nulla poena sine lege* (no crime, no punishment without law), which positivism treats as foundational.[113] Thus the inquiry is confined to those crimes specifically set out in statutes, and to human conduct for which the law has been willing to fix criminal liability to a corporation.[114]

The Identification Doctrine in Practice

The classic positivist expression of corporate liability is found in the Identification Doctrine, articulated in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915].[115] Here it was Lord Haldane LC that stated, in effect, that the individuals who control the business (i.e. Its "directing mind and will") should be identified with the company.[116] This was confirmed and

[108] N Lacey, *State Punishment* (London: Routledge, 1988) 56. Lacey examines the philosophical justifications for punishment and their application to corporate entities.
[109] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 (HL), at 170, per Lord Reid. Lord Reid held that the acts of a "directing mind and will" are the company's acts.
[110] RE Scott, 'Liability of the Corporate Entity' *Harvard Law Review* (1987) (100) (5) 1095-1130. Scott argues that corporate liability is a statutory creation.
[111] PH Robinson, 'The Principle of Legality' *Michigan Law Review* (1997) (95) (6) 1791-1815. Robinson articulates the principle of legality as a cornerstone of positivist criminal law.
[112] *Dougherty v State* (1873) 63 Ga. 299, at 302. The court held that no offence can be prosecuted without a legislative basis.
[113] A Ashworth, *Principles of Criminal Law* (5th edn, Oxford University Press, 2006) 82. Ashworth discusses the principle of legality in criminal law.
[114] G Williams, *Textbook of Criminal Law* (Stevens, 1981) 78. Williams argues that corporate liability must be specifically authorized by statute.
[115] *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 (HL), at 713, per Viscount Haldane LC. This case established the "directing mind and will" test.
[116] Ibid, 714. Viscount Haldane held that the company's "ego" is found in its directors

explored further in *Tesco Supermarkets Ltd v Nattrass* [1972] where Lord Reid explained the difference between the directing "mind and will" (those acts are the company's) and "mere servants" (those acts are not).[117]

This concept considerably limits the potential for corporate liability because a prosecutor is required to point to a specific senior executive the intent of whom may then be attributed to the corporation.[118] Critics claim that the "high water mark of the test" effectively renders large, decentralized companies "too big to jail" since it can be hard to find the "directing mind" within their layers of management.[119]

Hart's Critique and the Rule of Recognition

H.L.A. Hart's version of positivism offers a more nuanced perspectiveThere were in Hart's system rules of two sorts: primary rules of obligation, and rules of adjudication, rules of change and rules of recognition.[120] The Rule of Recognition The Rule of Recognition is the social rule that determines how one will recognize valid norms as law. In a court, it enables one to determine when one will hold corporations accountable.[121] In this vision, attributing corporate liability to Hart involves judicial effort to discover the "internal point of view" of the officials in question concerning that attribution.[122] This approach influenced Lord Hoffmann's judgment in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995],[123] And re-focused the issue from an investigation into the metaphysical to an inquiry into the interpretation of the relevant statute.

2.2.3 Sociological Jurisprudence: Law as Social Engineering

[117] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153 (HL), at 170-171, per Lord Reid. Lord Reid distinguished between the "directing mind" and "mere servants."

[118] M Gilmour, 'The Identification Principle: A Historical and Contemporary Analysis', Journal of Criminal Law (2018) (82) (3) 210-228. Gilmour traces the evolution of the identification doctrine.

[119] LSK, 'Reforming Corporate Criminal Liability' Law Society of Kenya Report (2021) 12. The report criticizes the identification doctrine as inadequate for modern corporations.

[120] Ibid, page 97. The rule of recognition is a social practice that identifies the sources of law.

[121] Ibid., p. 106. The rule of recognition allows officials to determine valid law.

[122] Ibid, 111. The "internal point of view" is the perspective of those who accept the rule of recognition.

[123] [1995] 2 AC 500 (PC) at 507, per Lord Hoffmann. Lord Hoffmann held that attribution rules depend on statutory interpretation.

Sociological Jurisprudence Roscoe Pound, Oliver Wendell Holmes Jr, and subsequent legal realists believed law to be an empirical fact – a device with which to achieve some social end or purpose.[124] As Pound put it, the law is a process of "social engineering" which is aiming at coordinating these competing interests and maximizing the fulfillment of human wants with least friction.[125]

The Instrumental Justification for Corporate Liability

In other words, from this standpoint, the justification for imposing criminal liability on corporations is pragmatic and utilitarian, not retributionist or formal.[126] These corporations hold substantial economic and political sway-their actions can damage communities globally. They can wreak havoc on the planet and financial markets; they could even set off nuclear war.[127] The reasons to establish criminal liability for corporations, are based on, among other things, its power of deterrence against the cost-benefit errors, its regulatory effectiveness, and its compensatory potential for the systemic damages inflicted on the society.[128]

The “nature” of liability is thus purely practical-the firm is found liable, not because it is morally culpable, but because doing so yields beneficial social consequences.[129] As Oliver Wendell Holmes, Jr., said, "The life of the law has not been logic: it has been experience." The law should be assessed not for its metaphysical consistency, but for its consequences.[130]

Scope of Liability: Adaptive and Responsive

---

[124] R Pound, *Social Control Through Law* (Yale University Press, 1942) 21. Pound developed the "social engineering" metaphor.

[125] R Pound, 'The Scope and Purpose of Sociological Jurisprudence' *Harvard Law Review* (1911) (24) (8) 591-619 at 602. Pound argues that law should balance competing social interests.

[126] OW Holmes, *The Common Law* (Boston: Little, Brown, 1881) 1. Holmes famously stated that "the life of the law has not been logic; it has been experience."

[127] J Braithwaite, *To Punish or Persuade: Enforcement of Coal Mine Safety* (Albany: State University of New York Press, 1985) 34. Braithwaite argues for a responsive regulatory approach to corporate crime.

[128] GS Becker, 'Crime and Punishment: An Economic Approach', *Journal of Political Economy* (1968) (76) (2) 169-217. Becker's economic model of deterrence has influenced corporate criminal law.

[129] RA Posner, 'An Economic Theory of the Criminal Law', *Columbia Law Review*, (1985) (85) (6) 1193-1231. Posner argues that criminal law should minimize the social costs of crime.

[130] OW Holmes, 'The Path of the Law', *Harvard Law Review*, (1897) (10) (8) 457-478, at 461. Holmes argues that the law is what courts will enforce. about the crime

Sociological jurisprudence takes to the idea of an adjustable, flexible "scope" of liability that grows and shrinks as demands and requirements shift over time in response to the present condition of society.[131] The evidence of legislative response to corporate scandals corroborates this argument - e.g., the Sarbanes-Oxley Act (US) followed the corporate failures of Enron and WorldCom in early 2000s, Dodd-Frank (US) followed the 2008 global financial crisis, the UK's Economic Crime and Corporate Transparency Act 2023 passed sooner than expected after the Panama Papers scandal broke.[132] Each one has been an answer to society's request for a tighter rein on corporate power.[133]

[131] R Pound, 'Interpretation of Legal History', *Harvard Law Review* (1923) (36) (6) 641-662. Pound argues that law must evolve with social changes.

[132] Sarbanes-Oxley Act 2002 (US) Pub. L. 107-)204; Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (US) Pub. L. 111-203; Economic Crime and Corporate Transparency Act 2023 (UK) c. 36.

[133] EM Dodd, 'For Whom Are Corporate Managers Trustees?', *Harvard Law Review* (1932) (45) (7) 1145-1163. Dodd argued that corporate managers have responsibilities to society, not just shareholders.

CHAPTER THREE

MODELS OF CORPORATE CRIMINAL LIABILITY

3.1 The Identification Doctrine Emerges

The key to the establishment of the corporation as subject to criminal liability came when the "identification" or "alter ego" doctrine was formulated. In *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd (1915)*,[134] Viscount Haldane LC articulated the principle that would become the cornerstone of corporate criminal liability:

" The corporation is in abstracto. It is not more intelligent or mindless than it is corporeal or incorporeal, and therefore its directing or acting will can only be found in the mind and directing will of an individual who, though an agent in name for purposes, really represents the intellect and will, ego, in short, of the corporation."

This principle was further refined in *Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* (1957),[135] In where Lord Denning LJ famously referred to the company as like a human being; its directors are the "brain" of the body and all its other members are the "hands" that do its work as it orders them.

Nigerian Development

As a former British colony, Nigeria had acquired the English common law stance on corporate criminal liability. The Nigerian courts are bound to apply the identification doctrine developed

[134] [1915] AC 705, 713.
[135] . [1957] 1 QB 159, 172.

in English law. In *R v Zik Press Ltd (1947)*,[136] Held by the West African Court of Appeal, that a company could be convicted of an offense which required the possession of *mens rea*. Similarly, in *Mandilus & Karaberis v COP (1958)*,[137] A company pleaded guilty to stealing by conversion in violation of the Criminal Code.

The Supreme Court of Nigeria affirmed the application of the identification doctrine in *N.N.S.C. v Sabana & Anor*,[138] holding that:

" For the Company is a legal person in fiction but operates by the instrumentality of natural persons. The company, however, is not bound by the actions of all or any its servants. The servants or employees whose actions bind the Company are their ' alter egos'; in other words, those in respect of whom due to their positions, the company's ' directing mind and will' resides, i.e., 'the ego and personality of the company."

3.2 Models of Corporate Criminal Liability

The rationale behind the criminalization of corporations is predicated upon various theoretical constructions which endeavor to accommodate the conventional criminal law concepts such as that the offense is to be considered a human phenomenon capable of both a free and moral agents and the practical implications and necessity of Corporate criminalisation.

3.2.1 The Vicarious Liability Theory

Using the doctrine of vicarious liability which is found in torrt law, is the easiest means by which a corporation can be convicted for crime. In essence this doctrine says a corporation will be liable for the crime committed by its employees oragents so long as they committed crime during their duties regardless if the corporation actually did anything wrong.[139]

---

[136] (1947) 12 WACA 202.
[137] (1958) WNLR 147.
[138] (1978) 2 SC 1.
[139] Nkemjika Anthony Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal* (2025) (2) (2) 58-79.

There is no moral justification for the concept of vicarious liability in criminal law – the explanation is pragmatic and relies on the observation that companies like any corporate body, only speak and act through natural persons.

By imposing criminal liability upon a corporation for the acts of its agents, the law provides a significant disincentive to the corporation to prevent the commission of crime.[140]

Vicarious liability has historically been a restricted aspect of criminal law – limited primarily to cases of strict liability, typically in regulatory offences which do not require *mens rea*. In *R v I.C.R. Haulage Ltd (1944)*,[141] Stable J said "unless that is a crime that is punished only by imprisonment or corporal punishment a corporation can be convicted of a criminal offense". The ruling in this case greatly extended vicarious liability in criminal law.

The doctrine of vicarious liability is accepted in Nigeria, under Section 90 of CAMA 2020. Thus, section 90(3) clearly states, "Nothing in this section shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment".[142] In *Texaco Africa Ltd v Nigerian Shipping & Trading Co Ltd (1962)*,[143] The court stated that a company would be liable where the actions of its managing agent were carried out within the purported scope of his powers even if no benefit resulted to it from the transaction.

The vicarious liability approach is said to be problematic, for a number of reasons. First, it is said to be too harsh in that it may render the corporation liable despite having taken every reasonable step to avoid criminal wrongdoing by employees. Second, it is criticized as being too simplistic and as failing to solve the fundamental problem of attributing mens rea to a corporation. Third, the fine that is required to be imposed in order to have a sufficient

---

[140] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe Journal of Contemporary Public Law, University of Nigeria* (2025) (12) (4) 4.
[141] [1944] KB 551, 554.
[142] Companies and Allied Matters Act 2020, section 90(3).
[143] (1962) LLR 17.

deterrent effect is potentially beyond the ability of the corporation to pay - the so-called "deterrence trap."[144]

3.2.2 The Identification (Alter Ego) Theory

Identification or "alter ego" or "organic" theory This is an advanced version of the identification theory that considers that the acts and state of mind of certain employees of a corporation who represent its 'directing mind and will' are to be taken to be the acts and state of mind of the corporation.[145]

The legal justification for the identification theory is the legal fiction that the company is a person with a separate personality. Whereas a natural person uses its mind and body to do something, the corporate entity uses the "directing mind" - its directors and other top officials - and "hands" - its general employees - to do things. When the directing mind commits an offence then, the company is deemed to have committed the offence.[146]

Lord Reid articulated this principle in *Tesco Supermarkets Ltd v Nattrass (1972)*[147]*:*

" A natural person has a mind that may either know something or intend it or fail to know what it ought to know and the hands to realize the intention. An incorporation has none of these: it must, but not always by the same, natural person, perform all such actions that the incorporation wants to be doing in the business world. So the natural person acting for it is not speaking or acting for the company, as an agent; he is acting as the company and his mind will be considered the mind of the company…so if it's a guilty mind, it's a guilty company."

The identification theory has been applied in Nigerian jurisprudence. In *AG Eastern Region v Amalgamated Press of Nigeria Ltd (1956-57)*[148]*,* That a corporation may be liable for libel

---

[144] NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and property Law* (2025) (12) (4) 8-9.

[145] Nkemjika Anthony Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal (2025) (2) (2) 58-79.*

[146] NO Umejidku and CN Uzoka, 'Towards a Rational Theory of Criminal Liability for Corporations in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2019) (6) (1) 133-134.

[147] [1972] AC 153, 170 (HL).

[148] (1956–57) 1 ERNR 18.

by imputation to the company of the knowledge of its agents. Similarly, in *Director of Public Prosecutions v Kent and Sussex Contractors Ltd (1944)*,[149] Stable J , that "the acts of the Managing Director were the acts of the company and the fraud of that person was the fraud of the company."

Nonetheless the identification theory has attracted some substantial criticisms. First, the theory lays down an unfair rule in favour of big businesses, which as a matter of fact can only identify a small portion of their employees who may have had the characteristic features required in order to hold the company liable. Generally speaking the offence committed is that by middle or lower tier management where an offence is committed without the senior officers being privy to the decision making process.[150]

Secondly, the identification theory overlooks the fact that, in contemporary corporations, decisions are typically made as a part of intricate, diffused decision making structures, rather than by a particular individual, the decision may well reflect committees, institutional cultures or systemic failures.[151]

Thirdly, the theory can facilitate the avoidance of corporate liability by effectively removing senior management from involvement in the actual operational facts, with the consequence that it may not be possible to pinpoint the 'directing mind' that committed the prohibited act.[152]

3.2.3 The Aggregation Theory

---

[149] [1944] KB 146.

[150] NO Umejidku and CN Uzoka, 'Towards a Rational Theory of Criminal Liability for Corporations in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2019) (6) (1) 133-134.

[151] Nkemjika Anthony Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal* (2025) (2) (2) 58-79.

[152] CN Iyidobi, 'Rethinking the Basis of Corporate Criminal Liability in Nigeria' *Nigerian Juridical Review* (2015) (13) 113-116.

The Aggregation Theory (the "collective knowledge theory" or the "corporate culture" theory) is another mode of addressing the issue of attributing criminal liability to corporations. Under this theory, the conduct, omission and mentality of several people can be pooled (aggregated) so as to constitute an offense.[153]

Unlike the identification theory which assumes one person held the requisite men's rea, the aggregation theory assumes a decision in the corporate is collective; the knowledge and intent of the corporation as a whole is spread between employees no one of which have all the knowledge. Here the aggregation theory can attribute liability on the corporation because the combined knowledge of various employees could demonstrate that all the elements of the offense have been established.[154]

The aggregation theory has found some acceptance in American jurisprudence. In *United States v Bank of New England (1987)*,[155] It was found that the bank could be found guilty of failing to report transactions, even though individual employees did not necessarily have knowledge of the failure to report. It was said that "a collective entity such as a corporation can be held to have the requisite knowledge or intent for criminal liability where multiple employees acting within the scope of their employment collectively possess the requisite knowledge." The aggregation approach has since been developed into the 'corporate culture' model, where a corporation will be liable for an offence if the corporation's corporate culture 'prompted' or ' condoned' the offence.[156] This model represents a departure from the standard individualist approach to mens rea by concentrating on the organizational properties that yield criminal behavior. There is some evidence, though not yet formal, of the Nigeria courts adopting a more relaxed attitude in the Nigerian jurisdiction to the aggregation theory. The

---

[153] Y Ma and N Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' *Journal of Economic Criminology* (2025) 10

[154] Nkemjika Anthony Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal* (2025) (2) (2) 58-79.

[155] 821 F.2d 844 (1st Cir. 1987).

[156] Australian Criminal Code Act 1995, section 12(3).

Corporate Manslaughter Bill currently before the National Assembly, modelled on the UK Corporate Manslaughter and Corporate Homicide Act 2007, provides for offences that occur not as a result of the action of a particular individual but in relation to the manner in which the corporation's activities are conducted or managed.[157]

Rationale for Corporate Criminal Liability

There are number of arguments as to why criminal liability can and should be imposed upon corporations; some pragmatic and some based on moral concerns. As illustrated, corporate criminal liability may have some functions, not all simply to punish the company.

Deterrence

Perhaps the most common rationale for the application of corporate criminal liability to corporations is for deterrence. Corporations are viewed as rational actors who are out to make a profit. The criminalization of certain corporate actions along with significant criminal penalties, i.e. Fines and bad publicity, hopefully deter corporations from criminal actions.[158] Nonetheless, deterrence has a number of caveats when applied in the corporate setting. Firstly, the deterrence trap: the size of fine which may be required to deter criminal behavior may exceed the corporation's ability to pay the fine, and therefore renders the penalty ineffective. Secondly, due to the multi-divisional nature of contemporary corporations top managers whose concern may solely be to maximize profit may not even be aware of the criminal activities engaged in by middle managers. Thirdly, since fines can be shifted onto consumers in the form of price increases, or onto shareholders in the form of reduced dividends this also lessens the deterrent effect on the perpetrators.[159]

Retribution and Justice

---

[157] Nwamaka Adaora Iguh and Kyrian Chukwuma Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2025) (12) (4) 9.

[158] Linus Hussein Ali, *Corporate Criminal Liability in Nigeria* (Malthouse Press 2009)

[159] NA Iguh and KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law (2025) (12) (4) 8. 8*

In this way corporate criminal liability performs a retributive purpose, in ensuring that corporations that do wrong are duly punished for that wrong doing. It is true that the corporation is unable to feel shame or guilt in the human sense but nevertheless the criminal sanction conveys the abhorrence that society has of the action of the corporation and vindicates the position of the victim.[160]

Such justification may be supported by the argument by writers that utilitarian justice would also have a role in determining corporate liability as opposed to individual liability. While it could be punitive to make a criminal accusation against an individual who is constrained by an unwritten corporate code to commit a criminal act where corporate policies created circumstances of illegality, corporate liability would make the profits gained through the illegal activity the problem of the corporation.[161]

Compensation and Restitution

A criminal process against a corporation can also assist with the compensation of a victim. When a corporation has been convicted of a criminal offence the court can make an order that the offender (corporation) provides compensation or restitution to a victim for the harm done by the corporation's activities.[162]

Sanction Provisions Corporate criminal liability framework in Nigeria, encapsulated by CAMA 2020 and other industry legislation contains sanctions such as fines and orders for compensation. There is concern as regards the sufficiency of these sanctions given the current limited capacity of the enforcement agencies in bringing corporate criminal offenders to book".[163]

Regulatory Compliance

---

[160] Celia Wells, 'The Shifting Sands of Corporate Criminal Liability' *Journal of Criminal Law* (2021) (1) 85.
[161] Frank I Asogwa, 'Corporate Criminal Responsibility' *Nigerian Juridical Review* (1994–1997) (158) 167–168.
[162] Linus Hussein Ali, *Corporate Criminal Liability in Nigeria* (Malthouse Press 2009) 117.
[163] NA Iguh and KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2025) (12) (4) 7-9.

Another justification for corporate criminal liability, that it performs an essential regulatory function as a way of ensuring that corporations obey legislation passed for the benefit of the public (which is particularly applicable in health and safety legislation, environmental legislation, financial legislation).[164]

The risk of criminal sanctions is therefore likely to be a strong motivator for businesses to operate effective compliance programmes and ensure their operations comply with all legal and regulatory provisions. This conforms to the overall movement in corporate regulation away from "rule-based" regimes to "compliance-based" regimes aimed at fostering compliance through the threat of sanctions for breach.[165]

Public Protection

Lastly, the policy that underlies corporate criminal liability is public protection. In the contemporary world, corporations are powerful organizations which possess immense economic, political and social sway. Thus corporate activity might affect the public at large – our health and safety and the environment. As criminal liability of corporations, it places a spotlight of publicity on the behavior of the corporation.[166]

This is especially so in the Nigerian situation where business operations, especially of the oil and gas companies, have been linked with environmental damages, dangers to the health of people and violations of their human rights. This is aimed at safeguarding the society and ensuring the responsibility of the companies for the impact of their business operation.[167]

---

[164] Nkemjika Anthony Onyewuchi, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal* (2025) (2) (2) 58-79.

[165] Y Ma and N Ryder, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' *Journal of Economic Criminology* (2025) 10

[166] CN Iyidobi, 'Rethinking the Basis of Corporate Criminal Liability in Nigeria' *Nigerian Juridical Review* (2015) (13) 113-117.

[167] Amnesty International, Nigeria: *New Government must ensure Shell's Sale of its Niger Delta Oil Business does not worsen Human Rights Abuses* (2023).

CHAPTER FOUR

NATURE AND SCOPE OF CORPORATE CRIMINAL LIABILITY IN NIGERIA

4.1 Nature of Corporate Criminal Liability

Corporate criminal liability may be described as one of the most controversial and intellectually stimulating and indeed vexatious aspects of contemporary Nigeria

Jurisprudence. Before now, criminal liability was at base personal; one has to be guilty of an offense and be punished accordingly. This idea of personal liability has to wrestle with the problem of how to impute an offense on a non-human or fictitious being, that is a corporation. A corporation is just a creature without a physical body, and it has neither a heart or brain with criminal intent in them.[168] As Okonkwo aptly observed, the traditional elements of criminal liability, actus reus (the guilty act) and *mens rea* (the guilty mind), seemed incomprehensible when applied to an abstraction such as a company.[169] How could an entity that cannot be imprisoned, cannot experience remorse, and cannot form intentions be said to "commit" a crime?

The answer lies in the realization that even though an corporation is an artificial entity, it operates through human actors. The directors, managers and officers and employees are the "mind and body" of the company, and their activities, in a real sense, ARE the company's activities. The is the conceptual underpinning of corporate criminal liability.

The three primary theories of imposing corporate liability that have been developed in modern law include the identification doctrine, vicarious liability, and strict liability. It has been considered that the traditional theory in common law countries is the identification doctrine whereby corporate liability may be imputed to a corporation based upon the actions and state of mind of a directing senior officers which embodied in "directing mind and will" of the corporation..[170] This is the classic statement of the English decision Lennard's Carrying *Co Ltd v Asiatic Petroleum Co Ltd* which has had a pervasive influence on Nigerian Law.[171]

---

[168] CO Okonkwo, *Criminal Law in Nigeria*, (2nd edition Ibadan: Spectrum Law Publishing, 1990) 124; NA Iguh & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria,' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2025) (12) (4) 1-18.

[169] Ibid, p. 125.

[170] See generally G Tesauro, 'The Concept of Corporate Criminal Liability: A Comparative Analysis,' *International Journal of Comparative Law*, (2023) (12) 45-67.

[171] [1915] AC 705 at 713-714. This case established the "identification principle" in English law, which has been highly influential in Nigeria; *HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159.

Vicarious liability, however, imputes the actions of the employees on the corporation even at lower levels as long as it is within the scope of their employ.[172] In regulatory settings with a focus on the protection of the public, the latter technique is often used. Third, strict liability offences, or offences which do not require the proving of *mens rea*, provide a fourth method of holding a corporation criminally liable. Strict liability offences are found primarily in regulatory legislation, where it is the legislature's intention that public safety outweighs any policy regarding culpability.

4.2 Recognition of Corporate Personality Under Nigerian Law

The concept of corporate personality is probably the most fundamental doctrine of company law. Nothing could be more important in the field of corporate criminal liability, because it is only in so far as a company has separate corporate personality that it is capable of being prosecuted for crimes.

The locus classicus of this doctrine is the House of Lords decision in *Salomon v Salomon & Co Ltd*[173], The seminal case in English law that held that upon incorporation a company gains separate legal personality from that of its shareholders, directors and officers. That case was very willingly accepted in Nigerian law. The Supreme Court in *Marina Nominees Ltd v Federal Board of Inland Revenue*[174] affirmed that a company is distinct from its shareholders, and the Court reiterated in *Union Bank of Nigeria Plc v Orharhuge*[175] 'once incorporation has occurred, the company will now have an identity separate and distinct from the persons that have incorporated the company'. This idea has been codified into Section 42 of the Companies and Allied Matters Act (CAMA) 2020, where it is stated that upon incorporation, the subscribers to the memorandum along with such members as may be allotted to them, shall be

---

[172] Company and Allied Matters Act, 2020 section 90(3).

[173] [1897] AC 22. This foundational case established the doctrine of corporate personality in English law, which has been adopted in Nigeria.

[174] *Marina Nominees Ltd v Federal Board of Inland Revenue* (1976) 2 F.N.L.R. 30.

[175] *Union Bank of Nigeria Plc v Orharhuge* (2002) 1 NWLR (Pt. 748) 274 at 289.

'a body corporate by the name contained in the memorandum' having perpetual succession and may sue and be sued in its corporate name'[176] Section 42(1) states: " The subscribers to the memorandum and all other persons who at any time after the date of incorporation as stated in the certificate of incorporation became members of the company shall be a body corporate by the name contained in the memorandum."[177]

Yet this corporate personality is not without its limits. For the most part, courts can see through the facade by piercing the veil of the corporate form in situations of fraud, illegal activity or gross unfairness. This doctrine of piercing the corporate veil has huge significance in corporate criminal law. In *Aminu Musa Oyebanji v The State*[178], The Court found that piercing the corporate veil occurs " when judicial action is taken to make corporate officials, directors or shareholder personally responsible for the corporation's tortious act. " in *Oboh & Anor v Nigeria Football League Ltd & Ors*[179], This Court has ruled that the veil may be lifted to prevent the misuse of corporate forms.

There is precedent for the National Industrial Court being prepared to pierce the veil in the right circumstances, such as where it found that "no justice could be done ... Without piercing through the veil of incorporation ... To see the character(s) who acted on its behalf", and a company director was held personally liable for wrongful dismissal of an employee along with the company (as cited above).[180] This illustrates how the protective shield of corporate personality can be removed when justice demands it.

4.3 Scope of Corporate Criminal Liability

Nigeria - Company liability for offences The Nigerian position regarding corporate liability for offences has however grown from its nascent common law origins, and the reluctance on

[176] Companies and Allied Matters Act 2020, section 42(1).
[177] Ibid, section 42(1).
[178] (2015) 14 NWLR (Pt. 1479) 270 at 295.
[179] (2022) LPELR-58994 (CA). See also *Kurubo v Zach-Motison Nig. Ltd* (1992) 5 NWLR (Pt. 239) 102 at 115, where Tobi, J.C.A. (as he then was) explained that the company is a distinct and separate being from its owner.
[180] National Industrial Court, Lagos Division, Suit No. NICN/LA/574/2022 (2024) (Unreported).

the part of courts to impute the capacity of 'mens rea' into the legal persona of the corporation. The pre CAMA 1990 corporate criminal law was for the most part common law based, with the CAMA 1990, now replaced with CAMA 2020, having largely codifed the previous judge made law principles.

In an essay question that asked if a company could havemens rea, the courts in Nigeria began to gradually accept that companies can have criminal intentions. In *Abacha v Attorney General of the Federation*[181], In unambiguous terms the Court declared that a corporation is capable of being prosecuted like a natural person and affirmed that corporate mens rea embraces corporate intent, corporate knowledge and corporate recklessness, a radical break with previous orthodoxies thatcriminal liability is individual and personal alone.

While Southern Nigeria operates under a Criminal Code, it has been interpreted to allow prosecution of a company. According to Okonkwo, "In the Criminal Code, 'any person' commences every offense, and it is trite law that a company is a 'person'.[182] It is thus possible for corporations to be convicted alone, or jointly with its officers, agents, and directors, of offences. Similarly in Northern Nigeria, in Northern Nigeria the penal code allows for corporate liability, although because of the origin of its criminal jurisprudence from Islamic law, its conception of the artificial personality involves other difficulties.[183]

Corporate criminal liability does have its limitations, and is confined by the "identification doctrine". This doctrine limits responsibility for the crimes to those committed by senior officials that are identified as the "directing mind and will" of the company. This approach has been attacked as insufficient where the business concern is large, as responsibility for

[181] (2014) 6 NWLR (Pt. 1402) 97 at 115-118.

[182] CO Okonkwo, Criminal Law in Nigeria, (2nd edition Ibadan: Spectrum Law Publishing, 1990) 124; See also Interpretation Act, Cap I23, Laws of the Federation of Nigeria, 2004, s.18.

[183] Penal Code Act, Cap P3, Laws of the Federation of Nigeria, 2004. For a discussion on its Islamic law origins and the concept of artificial personality, see generally GN Vukor-Quarshie, 'Corporate Criminal Liability: An Additional Chapter to the Criminal and Penal Codes of Nigeria,' *Jahrbuch für afrikanisches Recht (*1981) (2) 141-158.

decision-making is more complex.[184] Nigerian officials say legal strictures there, which follow older common law traditions found elsewhere, are a decade behind countries like Australia that are pursuing wider "corporate culture" approaches to liability.[185]

Nonetheless, Nigerian law did consider vicarious liability a basis for corporate criminal responsibility, at least at the regulatory level. For example, Section 90 (3) of CAMA 2 0 2 0 stipulated: "Nothing in this section shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment".[186] This clause is basically making the corporation indirectly responsible for any wrongful act done by its employees or agents even when that employee was acting unauthorizedly or fraudulently.

4.4 Offenses Attributable to Corporations Under Nigerian Law

4.4.1 Environmental Offenses

This arguably is one of the biggest areas of corporate criminal liability. Especially in the context of the oil & gas sector in Nigeria. TheNiger Deltahas long been a battle ground for ongoing ecological devastation. In fact, from 2010 to 2021, 893 spills happened every year on average..[187] This environmental devastation has prompted calls for stronger corporate accountability.

Early statute: Environmental pollution crimes of the past The Harmful Wastes (Special Criminal Provisions) Act, 1988, was one of the early acts to criminalize companies.[188] "Waste Act and Penalties" Section 1 prohibits the exportation, exportation, importation, storage, conveyance or dumping of harmful waste without license. Section 2 specifies that natural and corporate bodies can be prosecuted for these offenses. Section 5 states that serious offenses

---

184 NA Iguh, & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria,'. *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2025) (12) (4) 12-15.

185 See Australian Criminal Code Act 1995 (Cth), section 12.1-12.6, which adopts a "corporate culture" model of liability.

186 Companies and Allied Matters Act 2020, Section 90(3).

187 National Oil Spill Detection and Response Agency (NOSDRA), Oil Spill Statistics 2010-2021 (Abuja: NOSDRA, 2022) 15.

188 Harmful Wastes (Special Criminal Provisions) Act, Cap H1, Laws of the Federation of Nigeria, 2004.

could attract imprisonment of up to 7 years and a fine not exceeding N10 million on the officer of a corporate body, and the court can also compel the company to remedy environmental degradation or revokes its licence or permit.[189]

The Environmental Impact Assessment Act, 1992 outlines a legal mechanism by which Environmental Impact Assessment can be undertaken for proposed projects. Section 16 defines penalties, including a fine or imprisonment for the offences defined in the act. Section 18 specifically outlines penalties related to corporate offenses, imposing penalties, including fines, corporate officers' imprisonment and dissolution.[190]

The case of *SERAC and anor v Nigeria*[191], Brought before the African Commission on Human and Peoples' Rights revealed the complicity of the oil companies in the destruction of Ogoniland environment and in the denial of peoples' rights there. The Commission further found that the activities of these multinational corporations in Ogoniland in which is strongly connected with the brutality and repressive measures of the Nigerian Government is a violation of the provisions of Article 21 of the African Charter on Human and Peoples' Rights. The Commission also found that the Nigerian government's acts, is also violation of the provisions of Article 4(right to life) and Article 24 (right to a healthy and satisfactory environment).[192]

More recently, the *Okpabi v Royal Dutch Shell Plc* litigation has tested the boundaries of parent company liability for environmental harm caused by subsidiaries. The UK Supreme Court in *Okpabi and ors v Royal Dutch Shell Plc*[193] And acknowledged that there might be a duty of care owed by a parent company if the parent exercises substantial influence and/or control over the activities of a subsidiary. That judgment was followed in a case before the

[189] Ibid, sections 1, 2, 5.
[190] Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004, sections 16, 18.
[191] [2001] AHRLR 60 (African Commission on Human and Peoples' Rights, 2001).
[192] Ibid at paras. 55-60.
[193] *Okpabi and ors v Royal Dutch Shell Plc and anor* [2021] UKSC 3 at para. 45.

UK High Court in *Ogale & Bille v Shell Plc and SPDC* [194] (June 2025) ruled that UK parent company Shell Plc may be liable alongside its Nigerian subsidiary for historic pollution in the Niger Delta. The Court dismissed arguments that the subsidiary alone was responsible and concluded that continued pollution and failure to clean up were ongoing causes of action. Nevertheless, the actual implementation of environmental laws against corporations in Nigeria faces a myriad of challenges such as the lack of judicial independence, insufficient resources and expertise among regulatory agencies, insufficient transparency and accountability, lack of public awareness, cultural and social factors hindering the implementation of environmental laws.[195] It has also been argued by some legal academics that the introduction of a "failure to prevent" oil pollution offence, along the lines of the UK Bribery Act 2010, should be considered to increase corporate accountability for environmental damage.[196]

4.4.2 Tax Evasion

Tax evasion: This forms the next major head of corporate criminal liability in Nigeria. The primary agency for tax enforcement is the Federal Inland Revenue Service (FIRS). The Companies Income Tax Act mandates the filing of proper returns and the payment of tax.[197] Deliberate evasion attracts both civil penalties and criminal prosecution.

The principle of corporate personality has implications for tax liability. In *Marina Nominees Ltd v Federal Board of Inland Revenue*[198], Shareholders and tax liabilities A tax liability of the company is different from that of its shareholders, The company cannot use the fact that the tax has been paid by the shareholders of dividends to avoid tax and similarly the

[194] *Ogale & Bille v Shell Plc and SPDC* (UK High Court, 2025) (Unreported).
[195] AA Adebayo, 'Environmental Law Enforcement in Nigeria: Challenges and Prospects,' *Journal of African Environmental Law* (2024) (7) 32-48.
[196] See UK Bribery Act 2010, section 7; EE Okon, 'Corporate Criminal Liability under Nigerian Environmental Law,' *Lesotho Law Journal: A Journal of Law and Development*, (1993) (9) 171-184.
[197] Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria, 2004.
[198] (1976) 2 FNLR 30 at 35-37.

shareholders cannot be held responsible for the unpaid tax of the company unless, under very few special circumstances the veil is lifted.

Application of section 93 of CAMA 2020 to fraudulent acts of corporate agents (corporate liability). Section 93 of the CAMA 2020 creates a vicarious liability for companies for any fraudulent actions of their officers and this will apply to corporate tax evasion schemes.[199] If tax fraud is perpetrated by an employee in the course of their employment, then the company itself may be subject to criminal liability, regardless of the knowledge of the management level executives.

The UK's "failure to prevent" tax evasion offense has been put forward as a model to follow by Nigeria.[200] This offense, applicable to a company, occurs when the corporation has failed to take steps to prevent persons connected to the company from aiding or abetting tax evasion. It is recommended that a similar section of offense in our Nigerian company law regime will be able to tackle the incidence of corporate tax related offense.

4.4.3 Financial and Economic Crimes

Given the magnitude of financial and economic crimes, the Nigerian legislature has been keenly concerned with such issues. An Economic and Financial Crimes Commission (EFCC) was therefore set up under the Economic and Financial Crimes Commission Act, to be the foremost law enforcement agency in the investigation and prosecution of financial crimes such as money laundering, corruption, and fraud by corporate bodies or their officers.[201]

Under the EFCC Act, the Commission has the power to arrest and prosecute anybody who engages in financial crimes in the corporate world. Both corporate bodies and their officials could be jointly prosecuted for committing the advance fee fraud, money laundering, amongst others.

---

[199] Companies and Allied Matters Act 2020, section 93

[200] K Olaniyan, 'Corporate Criminal Liability in Nigeria: Lessons from Australia,' *Nigerian Law Review*, (2024) (5) 95.

[201] Economic and Financial Crimes Commission (Establishment) Act, 2004, No. 1, 2004.

Nevertheless, the concept of corporate personality had also been used at certain times as a defense mechanism to escape criminal liability. In Section 7 of the Administration of Criminal Justice Act (ACJA), 2015 stated that "A person shall not be arrested in lieu of a suspect".[202] The paragraph in the regulation exempts individuals from being arrested instead of a corporation, but this exemption will not stop individuals being arrested for carrying out or commanding an offence.

If an officer is the "directing mind" of the corporation, he or she will be personally guilty of a criminal offence. The case of *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*[203], Although this was a case in England it has had an impact in the Nigerian law on this subject matter. An executive of the corporation that is the 'directing mind and will' of the company may be made liable for criminal offences committed using the corporate personage.

Whether individual or corporate liability should prevail has long been a matter of contention. Others assert that this resistance in bringing individuals to justice rather than corporations have generated an "enforcement deficit", permitting corporate criminals to escape sanctions.[204] Others argue personal responsibility for actions committed should only be attributed to those whose personal culpability is demonstrably established. It mirrors established standards for criminal liability.

4.5 Relevant Statutes and Case Laws

4.5.1 Company and Allied Matters Act (CAMA)

Company and Allied Matters Act 2020 "The Company and Allied Matters Act 2020 is the principal statute dealing with corporate issues in Nigeria. Section 42 establishes the doctrine

[202] Administration of Criminal Justice Act, 2015, section 7.
[203] [1915] AC 705.
[204] NA Iguh, & KC Ibe, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria,' *Nnamdi Azikiwe University Journal of Commercial and Property Law (2025) (12) (4) 16-18.*

of separate legal personality where the incorporated company is established as a body corporate distinct from its members."[205]

Company and Allied Matters Act 2020 "The Company and Allied Matters Act 2020 is the principal statute dealing with corporate issues in Nigeria. Section 42 establishes the doctrine of separate legal personality where the incorporated company is established as a body corporate distinct from its members."[206] Under this article, vicarious liability is established for corporations for acts of an agent, irrespective of whether those acts were fraudulent or otherwise improper.

CAMA 2020 also covers the role of directors with respect to corporate criminal liability. Directors may be personally held liable if the company committed the offense fraudulently or recklessly.[207] The act allows the Corporate affairs commission to supervise the conduct of companies and ensure compliance with provisions of the Act.

CAMA introduces specific criminal offenses to individuals engaged in business as companies. For example, S. 863 defines carrying on business as a company, to be an offense, punishable with either fine, or imprisonment or both.[208] Every registered entity is mandated by Section 729(1) of the Companies Act to display its registered name and number in business premise and all business stationery, failure of which; every person shall be liable to a penalty for each day on which the default continues, and every officer and every manager of the entity also incurs similar liability.[209]

4.5.2 Criminal Code and Penal Code

[205] Companies and Allied Matters Act 2020, section 42.
[206] Ibid, section 93.
[207] Companies and Allied Matters Act 2020, section 316.
[208] Ibid, section 863.
[209] Ibid, section 729(1), (3).

Criminal codes are applicable in the Southern states of Nigeria while Penal code apply in the northern States to define or create criminal offence[210] The Code does not provide any specific criminal liability for corporations as distinct from the liability of individual members of the corporation. This has been the subject of controversy in doctrinal writings. Okonkwo had noted that offences in the Criminal Code commence with "a person," and it is common law that a company is "a person."[211] Since, however, there is not the slightest possibility of imprisonment of a corporation, a different sort of punishment is generally prescribed by the courts for offenders as a group. Thus, usually no punishment of any other than fines takes place.

Further complications arise from the fact that the Penal Code draws its Islamic law ancestry. While the principle of artificial personality (Shakhsiyyah 'Itibaariyyah) exists in Islamic jurisprudence, the interpretation and application of the doctrine differs from the one developed in common law. As already noted by scholars, the present legal setup in Nigeria may be more conducive to corporate personality doctrine, but is obstructive to the practical utility of Shari'ah rules regarding corporate personality.[212]

Both Codes may have been used to facilitate corporations to be prosecuted In *Abacha v Attorney General of the Federation*,[213] In strong terms, the court affirmed that the company is a legal entity, which may even be tried as though it were a person. The judgement laid precedent that Criminal Code or Penal Code do not block corporate crime.

---

[210] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004; Penal Code Act, Cap P3, Laws of the Federation of Nigeria, 2004.

[211] CO Okonkwo, *Criminal Law in Nigeria*, (2nd edition Ibadan: Spectrum Law Publishing, 1990) 124; See also *A.G. (Eastern Region) v Amalgamated Press* (1956-57) 1 E.R.L.R. 12; *R v Service Press Ltd* (1952) 20 NLR 96.

[212] GN Vukor-Quarshie, 'Corporate Criminal Liability: An Additional Chapter to the Criminal and Penal Codes of Nigeria,' *Jahrbuch für afrikanisches Recht,* (1981) (2) 141.

[213] (2014) 6 NWLR (Pt. 1402) 97 at 115-118.

4.5.3 Economic and Financial Crimes Commission (EFCC) Act

This act establishes the Economic and Financial Crimes Commission as the major government organization responsible for investigating and prosecuting economic and financial crimes in Nigeria.[214] Money laundering, corruption, advance fee fraud, etc., are covered under the Act as economic and financial crimes. The EFCC can take any individual or corporation to court for the purpose of their prosecution. The EFCC has power to investigate and arrest any person or institution and has power to prosecute any suspected individual or corporate entity, with officers, directors, employees of any company to also be prosecuted.

The EFCC powers has not been free of challenges. Issues relating to the operational methods of the commission and efficiency of enforcement have always raised concerns. However, there have been many convictions of persons and organizations by the Commission over financial crimes, the development of corporate criminal law in Nigerian jurisprudences, while the Commission is also subject to, in its operational framework, other statutes such as; the Money laundering (Prohibition) act, Advance fee fraud and other fraud related offences act, banks and other financial institutions act etc.[215] Combined, the statutes set forth the regulatory framework that would govern conduct in Nigeria's financial space.

4.5.4 Case Law Analysis

The corpus of case law on corporate criminal liability in Nigeria is growing; some important case law includes.

Abacha v Attorney General of the Federation[216] is perhaps the most significant case on corporate criminal liability in Nigeria. The Supreme Court was faced with the question of whether a corporate entity can be prosecuted for a criminal offense. The Supreme Court

---

[214] Economic and Financial Crimes Commission (Establishment) Act, 2004, No. 1, 2004.

[215] Money Laundering (Prohibition) Act, 2011, No. 1, 2012; Advance Fee Fraud and Other Fraud Related Offenses Act, Cap A6, Laws of the Federation of Nigeria, 2004; Banks and Other Financial Institutions Act, 2020, No. 5, 2020.

[216] (2014) 6 NWLR (Pt. 1402) 97 at 115-118.

unequivocally answered in the affirmative, stating that a corporation is prosecuted in the manner as if it were an individual natural person and corporate *mens rea* involves corporate intention, knowledge andrecklessness. The Supreme Court laid the legal foundation for prosecutions against corporations in Nigeria.

Adeniji v The State[217] has been regarded as "the most thorough treatment of corporate criminal liability in Nigeria, more so with regards to the individual liability of officers of a corporation". The case examined how a corporation could be held liable and how individuals who serve as directors or officers of a corporation could also be personally responsible for the crimes committed.

*SERAC and anor v Nigeria*This landmark African Commission on Human and Peoples' Rights case (SERAP v. The State of Nigeria) looked into oil companies' responsibility for human rights and environmental damage in Ogoniland. It found that Shell's actions in Nigeria, in complicity with the Nigerian state, were a violation of the African Charter on Human and Peoples' rights. Although not directly holding Shell liable, the case helped establish standards for corporate responsibility for such impacts.

Okpabi and ors v Royal Dutch Shell Plc and anor[218], Even though it has been decided by the UK Supreme Court may influence Nigerian law, it will still have substantial impact. UKSC decided that the parent company may have a duty of care if it takes extensive management of its subsidiaries operations. Consequently, multinational parent companies may be held responsible for the actions of their Nigerian subsidiary without overcoming the challenges of obtaining a judgment in Nigeria against a Nigerian subsidiary.

Ogale & Bille v Shell Plc and SPDC (UK High Court, June 2025)[219] represents a landmark development in corporate liability for environmental harm. The Court ruled that the UK parent

---

[217] (2001) 2 NWLR (Pt. 697) 232 at 248.
[218] [2021] UKSC 3 at para. 45.
[219] *Ogale & Bille v Shell Plc and SPDC* (UK High Court, 2025) (Unreported).

company, Shell Plc, could be jointly liable with its Nigerian subsidiary for oil spills in the Niger Delta. Arguments to the effect that only the subsidiary should be held liable were rejected, as the Court considered that continuous pollution and lack of remedial action constituted a cause of action that arose continuously. The ruling follows the recent decision of the UK Supreme Court in the Okpabi case and will extend the scope of parent company liability more broadly.

Union Bank of Nigeria Plc v Orharhuge[220] Supported the principle of corporate personality stating that, "on its incorporation the company acquires a legal status distinct from that of those who incorporated it." Yet, it also recognizes that the veil of incorporation can be lifted in circumstances.

Oboh & Anor v Nigeria Football League Ltd & Ors[221] held that the veil of incorporation may be pierced to prevent abuse of corporate structures, confirming that corporate personality is not absolute.

In a recent National Industrial Court decision,[222] Justice Elizabeth Oji stated that "it is impossible to do justice in this case without lifting the veil of incorporation of the Direct on Data Ltd, and discovering the identity or identities of the character(s) who acted on her behalf". Therefore, the court directed the company director be personally liable with the company for the termination of the employment contract. This is evidence that Nigerian courts are willing to pierce the veil of incorporation for the purposes of doing justice.

Marina Nominees Ltd v Federal Board of Inland Revenue[223] Confirmed the status of the company and demonstrated that the company and shareholders were different and the liabilities of the company were not necessarily those of members.

[220] (2002) 1 NWLR (Pt. 748) 274 at 289.
[221] (2022) LPELR-58994 (CA).
[222] National Industrial Court, Lagos Division, Suit No. NICN/LA/574/2022 (2024) (Unreported).
[223] (1976) 2 FNLR.

Aminu Musa Oyebanji v The State[224] Held that an exception to the veil of corporate personality consists of "the judicial removal or lifting of the veil of corporate personality, i.e. An order that personal liability be imposed upon officers, directors or shareholders that are otherwise immuned by the act or commission of the corporation".

Vedanta Resources PLC & anor v Lungowe & ors[225], although a decision by the UK Supreme Court, this case has influenced Nigeria jurisprudence significantly, where the court determined whether or not a parent company can be held liable for the harm done by its subsidiaries, a position later utilized in the Okpabi's case.

[224] (2015) 14 NWLR (Pt. 1479) 270 at 295.

[225] [2019] UKSC 20. This case was influential in the development of parent company liability principles later applied in the Okpabi litigation.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The chapter closes by consolidating the core findings of this research relating to the law of corporate criminal liability, starting with a brief re-statement of those core findings that directly relate back to the goals of this research. It is important that, in interpreting these findings, reference be made to a series of limitations which restrict their applicability beyond the parameters of this research, such as jurisdictional restrictions which limits their generalisability to other legal systems based upon alternative legislative provisions and jurisprudence, methodological constraints arising out of the doctrinal methodology that are potentially ill-suited to capturing the socio-legal realities of prosecutorial discretion and, limitations based upon data which indicates that many cases involving corporate criminality result in the imposition of administrative penalties and are not pursued to the end by the judiciaryThese shortcomings do not nullify the study's findings in relation to the specified topic; rather, they provide guidance for further inquiry. The present study concluded that Nigerian legal practice in the field of corporate criminal liability operates upon the established notion that a company may be held crimincally liable for acts of its officers when committed within the scope of their authority, a principle well established in the common law and transposed into the Nigerian legal system. However, the investigation illustrated that the Nigerian courts' reliance on a narrow reading of the corporate criminal liability principle (the identification doctrine) – whereby a defendant corporation can only be liable when a truly senior individual within the company hierarchy, embodying the 'directing mind and will' of the company, commits the offense – renders proof of liability extremely challenging and results in a presumption of corporate immunity in practice, particularly given the diffuseness of corporate decision making within large organizations, and the likelihood that persons actually committing the offense are not the relevant high ranking officers to trigger liability. 5 The investigation established further that the fundamental theoretical impediment to effective corporate criminal liability remains the philosophical difficulty of assigning guilt to an artificial person, and that this issue is aggravated by the persistence of courts in applying a rule which was originally designed for and adapted to an age of less complex organizations, now increasingly inadequate in an age of the multinationalIt was also found by the investigation that the current statutory alternatives to prosecution-which includes fines and penalties levied administratively, civil forfeiture actions, and the imposition of regulatory sanctions-are severely deficient in their ability to deter corporate misconduct on the ground, suffer from a lack of enforcement power and political interference in prosecutorial decision making and lack of coherent sentenc[ing] regime for the conviction of the corporation, which is often seen as the "cost of doing business." Further, the study highlighted that current framework falls short of international best practices and of other anti-corruption and human rights instruments. The current regime is found to be wanting in its provision for both non-criminal and criminal sanctions which would be effective, dissuasive and proportionate.

Also it has failed to appropriately consider the liability of parent companies in relation to the conduct of their subsidiaries; an omission which has been rectified in many jurisdictions through imaginative legislative initiatives which impose strict liability on parent companies and inverting the burden of proof to make it incumbent on the company to establish that adequate procedures were in place to prevent corruption.

The research further showed that the institutional capacity to investigate and prosecute corporate crimes is severely limited; the prosecutors lack sufficient specialized knowledge, resources and independence to carry out effectively their investigations into complicated corporate offenders. This deficiency is exacerbated by the tremendous imbalance in power which exists between corporate defendants who are able to engage high priced legal counsel, on the one hand, and prosecution agencies which are perpetually under-resourced and overstretched, on the other hand. Finally, the research revealed a significant void in current literature on the corporate criminal liability's interplay with other concerns such as corporate governance, human rights and environment sustainability; this lacuna has been filled by placing the domestic legal framework on corporate criminal liability into an international and comparative perspective and by making the case that although the legal foundations for corporate criminal liability are not without merit, the actual application has been hampered by a tendency towards legal conservatism, organizational deficiency and resistance to holding potent corporate actors accountable for the repercussions of their activities.

5.2 Recommendations

Following on logically from the findings summarized above this research suggests the following proposals that should be: pragmatic, measurable and achievable by the relevant actors and the receiving authorities and are grouped under the categories of legislative reform, judicial practice and further research. Based upon the findings that the traditional identification doctrine has been shown to be unsuitable for a modern corporation within which decision making is commonly diffuse and collective it is recommended that criminal legislation be amended by the legislature to move away from the limitations of the identification doctrine towards a wider regime of vicarious liability for corporate crime on the model of countries which have successfully amended corporate law in order to bring corporations into account for all actions committed by their agents or employees within the scope of employment and the jurisdiction where they work regardless of their rank or level within the organisation. In more particular it is recommended that any such legislative amendment include a rule whereby criminal liability shall attach to a corporation where the offence is committed by any person acting on its behalf within the scope of their actual or apparent authority, subject to the burden of proof being on the corporation to show that it took all reasonable measures through appropriate compliance programmes and due diligence procedures to prevent the offence, this would both encourage the use of good governance standards and highlight the move from previous levels of impunity from corporate crime in the jurisdiction. Also in light of the gap in corporate criminal sentencing guidelines that has been identified it is recommended that a sentencing regime be introduced that clearly sets down sentencing guidelines for offences committed by corporate bodies including for the imposing of large financial penalties as a percentage of total annual turnover, not a fixed amount which can be easily paid by a large corporation, for the imposition of remedial orders in relation to such corporations to require compliance measures and tackling of underlying causes for the crime committed, to allow for adverse publicity orders in which the corporation must announce its conviction and, where appropriate, judicial supervision. It is also advised that the appropriate regulators consider revising their respective regulations so that all public and large private companies must have mandatory compliance and anti-corruption programmes and directors be personally liable for seeing that they are sufficient, a proposal that resonates with the strategy of enlightened jurisdictions in enacting strict liability offence for the failure to prevent Bribery, fraud and other Corporate wrongs. In relation to judicial responses, it is hoped that the rigid enforcement of the identification doctrine may be tempered in appropriate cases, with courts adopting a more functional and purposive approach to corporate attribution of criminal activity, focusing on the nature of the activity itself and the overall organisational context in which the offense has been committed and not the status of the offender, enabling corporate attribution and fulfilling the intent of the legislative framework pertaining to corporate crimes. Furthermore, the study suggests that certain specific procedural reforms should be adopted to tackle the problems that have been highlighted in prosecuting Corporate crime, including; the establishment of a specialized Commercial crimes court or division within the High Court with the exclusive mandate for handling all matters of corporate crime; ensuring prosecutors and judges receive training on the highly technical financial and evidentiary issues that are characteristic of such prosecutions; the introduction of deferred prosecution agreements, an instrument which could encourage corporate self-reporting and co-operation whilst ensuring compliance and ultimate responsibility, through court-overseen undertakings,; and the creation of a specialized corporate prosecution division within the responsible law enforcement agency. These procedural recommendations are backed by evidence which suggests that the current institutional capability for prosecution is sorely lacking. Finally, in respect of further research it is recommended that further Comparative legal analyses of corporate liability laws and approaches in a range of jurisdictions are needed to assess 'best practices' and inform domestic reform efforts, especially as the issues identified in this research are not idiosyncratic but reflect broader global challenges which have already been addressed in a constructive and inventive fashion by legislature and the courts, in many common law and civil law jurisdictions. Consequently, given the inadequacies of the doctrinal approach it would be valuable if future studies would take up empirical approaches in order to investigate the practical functioning of the law and its effects on corporations, by, inter alia, carrying out interviews with prosecutors, judges, corporate lawyers and compliance officers, examining case-studies of significant corporate prosecutions and non-prosecution agreements and so to grasp the sociolegal dimensions that cannot be gleaned from statutes and court decisions. Furthermore, research in an interdisciplinary approach which combines the insights of criminology, organisational psychology and economics would bring to shed light to the present issues, looking in particular to the corporate decision-making structures and effectiveness of various approaches to deal with corporate crimes; long-term empirical studies which monitor the effects of various legislative and judicial interventions in a lengthy span of time would produce robust evidence on which evidence-based law reform would be based rather than hypotheses or mere beliefs and preferences.

5.3 Conclusion

The research for this study was concerned with the existing legal framework concerning the criminal liability of corporations. The doctrinal analysis conducted here has made a number of important findings, which when put together cover the various purposes with which this research was launched, and will enhance the literature on corporate criminal liability, including that this legal framework is conscious of the existence of the prospect of corporate criminal liability but it remains plagued by a restricted identification doctrine that has been incapable of capturing the reality of corporations today with their widespread and distributed decision making functions, that there has been a delay on the part of the courts to develop new methods of attribution to this effect given their awareness that current doctrines are no longer suitable, that these statutory provisions have not achieved adequate deterrence given the few and far between cases of conviction and the existing penalties have not been a deterrent, and that the academic literature in this field has failed to identify the nexus between domestic criminal corporate liability and various obligations imposed on countries under various human rights and anti corruption international conventions, and has as a result sought to remedy this gap through a holistic assessment that positions the domestic law within its comparative and international context. This research is of significance in a number of respects, including its giving an all-round treatment in combining doctrinal statements with a critical study of how judicial practice actually plays out, its pinpointing of those specific areas where the law is deficient and making practical recommendations on legislation and judicial interpretation, and its enrichment of legal theory by showing how the identification doctrine no longer works when faced with the complexities of transnational corporate organisations, and suggesting the development of a functional theory of attribution to identify the perpetrators not based on their position within the organisational structure of the corporate defendant but the function that individual's conduct performed within the corporate's organisational structure. The conclusions are evidence based and in line with what has been set out before, and the recommendations provided should be taken as a whole bundle of mutually reinforcing interventions because isolated legislative amendments cannot produce their results in the absence of concurrent changes in the behaviour of the courts, prosecutors and the prevailing institutions culture. In conclusion, the system governing criminal corporate liability, though logically consistent, has failed to come to terms with modern corporate crime, particularly its transnational dimensions, increasing complexity and debilitating effects of its consequences in relation to human lives and the environment. This means that lawmakers need urgently to introduce amendments to the criminal codes to provide a broader basis for attribution and detailed guidelines for sentencing, courts need to take a more purposive approach to the interpretation and develop a consistent jurisprudence for corporate crime,Prosecutors should boost capacity for complex corporate crimes investigation and prosecute crimes by adopting effective investigative tools and prosecutors' capacity and intelligence in effective investigative and investigative procedures, Regulatory agencies must improve the monitoring of corporate behavior, and companies must acknowledge that impunity is coming to an end, and should adopt comprehensive, internal compliance programs instead of just empty promises. This essay represents an extremely limited attempt at providing to the legal scholarship relating to corporate criminal liability and although with recognition of the foregoing shortcomings, it lays some groundwork on which the path of further investigation and law reform might be made and from this it is humbly hoped that the discoveries and recommendations contained within can at least be used by all to furthering their objectives of the better functioning and more equitable development of the law on corporate criminal liability. The research herein ultimately concludes that the effective operation of the law relating to corporate criminal liability does not simply revolve around issues of technicality and legality but instead forms a cornerstone to the safeguarding of human rights, protection of the environment, preventing the perpetuation of bad business practice, sustaining confidence in the legal system and indeed a prerequisite for the preservation of democratic governance and the rule of law, and it is humbly submitted that the implementation of the suggestions contained within this chapter faithfully would move this branch of the law towards achieving the purposes of justice by ensuring the liability of those with significant power and influence for the impacts of their actions.

BIBLIOGRAPHY

BOOKS

Ali LH, *Corporate Criminal Liability in Nigeria* (Lagos Malthouse Press 2009).

Ashworth A, *Principles of Criminal Law* (5th edn, Oxford University Press 2006).

Austin J, *The Province of Jurisprudence Determined* (London: John Murray 1832).

Blackstone W, *Commentaries on the Laws of England* (Vol 1 Oxford: Clarendon Press 1769).

Braithwaite J, *To Punish or Persuade: Enforcement of Coal Mine Safety* (State University of New York Press 1985).

Coleman J, *The Practice of Principle* (Oxford University Press 2001).

De Tommaso A, *Corporate Liability and International Criminal Law* (London Routledge 2024).

Donaldson T, *Corporations and Morality* (Englewood Cliffs, NJ: Prentice-Hall 1982).

Finnis J, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011).

Hart HLA, *The Concept of Law* (Oxford University Press 1961).

Holmes OW, *The Common Law* (Boston: Little, Brown 1881)

Lacey N, *State Punishmen*t (London Routledge 1988).

Okonkwo CO, *Naish ME, Criminal Law in Nigeria* (2nd edn, London: Sweet and Maxwell 1980).

Pound R, *Social Control Through Law* (New Haven: Yale University Press 1942).

Werhane PH, *Persons, Rights, and Corporations* (Englewood Cliffs, NJ: Prentice-Hall 1985).

Williams G, *Criminal Law: The General Part* (2nd edn, London: Stevens & Sons 1961).

Williams G, *Textbook of Criminal Law* (London: Stevens 1981).

JOURNAL ARTICLES

Adebayo AA, 'Environmental Law Enforcement in Nigeria: Challenges and Prospects' *Journal of African Environmental Law* (2024) (7) 32-48.

Asogwa FI, 'Corporate Criminal Responsibility' *Nigerian Juridical Review* (1994-1997) (158) 167-168.

Bamgbose O, 'An Evaluation of the Theoretical Basis of Corporate Criminal Responsibility for Corporate Killings in Nigeria' *University of Ibadan Law Review* (2022) (12) (1) 130-144.

Becker GS, 'Crime and Punishment: An Economic Approach' *Journal of Political Economy* (1968) (76) (2) 169-217.

De Tommaso A, 'The Future of International Criminal Justice is Corporate' *Journal of International Criminal Justice* (2025) (23) (1) 17-26.

Dewey J, 'The Historic Background of Corporate Legal Personality' *Yale Law Journal* (1926) (35) (6) 661.

Dodd EM, 'For Whom Are Corporate Managers Trustees?' *Harvard Law Review* (1932) (45) (7) 1145-1163

Dsouza, Schmitt-Leonardy, 'Old and New Tracks for Corporate Criminal Liability' (2025) (30) 179-219.

Foerschler A, 'Corporate Criminal Intent' *California Law Review* (1990) (78) 1286.

Gilmour M, 'The Identification Principle: A Historical and Contemporary Analysis' *Journal of Criminal Law* (2018) (82) (3) 210-228.

Goodpaster KE, 'The Concept of Corporate Responsibility' *Journal of Business Ethics* (1983) (2) (1) 1-22.

Hunting M, Lace M, 'Extension of Corporate Criminal Liability in the UK' *Westlaw Today* (2025) 24.

Iguh NA, Ibe KC, 'An Appraisal of Criminal Liability of Limited Liability Companies in Nigeria' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2025) (12) (4) 1-18.

Iyidobi CN, 'Rethinking the Basis of Corporate Criminal Liability in Nigeria' *The Nigerian Juridical Review* (2015) (13) 112-120.

Ma Y, Ryder N, 'Progress or Stagnation? The Evolution and Reform of Corporate Criminal Liability in the UK' *Journal of Economic Criminology* (2025) 10.

Moore G, 'Corporate Moral Agency: A Review and Critique' *Journal of Business Ethics* (1999) (21) (4) 329-343.

Nkolo EC, 'Challenges of Corporate Criminal Liability in Nigeria' *International Journal of Comparative Law and Legal Philosophy* (2021) (3) (3) 54-63.

Ogunlade FZ, 'Criminal Responsibilities of Directors' *African Journal of Law and Criminology* (2023) (13) (2) 9-30.

Okon EE, 'Corporate Criminal Liability under Nigerian Environmental Law' *Lesotho Law Journal A Journal of Law and Development* (1993) (9) 171-184.

Olaniyan K, 'Corporate Criminal Liability in Nigeria: Lessons from Australia' *Nigerian Law Review* (2024) (5) 95.

Olaoluwatofunm Bamgbose, 'An Evaluation of the Theoretical Basis of Corporate Criminal Responsibility for Corporate Killings in Nigeria' *University of Ibadan Law Review* (2022) (12) (1) 130-144.

Onyewuchi NA, 'Critique of Corporate Criminal Liability in Nigeria: Echoes from Selected Jurisdictions' *Law, Business and Business Justice Journal* (2025) (2) (2) 42-79.

Posner RA, 'An Economic Theory of the Criminal Law' *Columbia Law Review* (1985) (85) (6) 1193-1231.

Pound R, 'The Scope and Purpose of Sociological Jurisprudence' *Harvard Law Review* (1911) (24) (8) 591-619.

Pound R, 'Interpretation of Legal History' *Harvard Law Review* (1923) (36) (6) 641-662.

Robinson PH, 'The Principle of Legality' *Michigan Law Review* (1997) (95) (6) 1791-1815.

Schane S, 'The Corporation is a Person: The Language of a Legal Fiction' *Tulane Law Review* (1986) (61) (3) 563-609.

Scott RE, 'Liability of the Corporate Entity' *Harvard Law Review* (1987) (100) (5)1095-1130.

Shajobi-Ibikunle G, Oseghale DOS, 'Artificial Intelligence and Corporate Criminality' *LexScriptio* (2025) (2) (2) 150-165.

Umejidku NO, Uzoka CN, 'Towards a Rational Theory of Criminal Liability for Corporations in Nigeria.' *Nnamdi Azikiwe University Journal of Commercial and Property Law* (2019) (6) (1) 133-134.

Van Sliedregt E, 'The Future of International Criminal Justice is Corporate' *Journal of International Criminal Justice* (2025) (23) (1) 17-26.

Velasquez M, 'Debunking Corporate Moral Responsibility' *Business Ethics Quarterly* (2003) (13) (4) 531-562.

Vukor-Quarshie GN, 'Corporate Criminal Liability: An Additional Chapter to the Criminal and Penal Codes of Nigeria' *Jahrbuch für afrikanisches Recht* (1981) (2) 141-158.

Wells C, 'The Shifting Sands of Corporate Criminal Liability' *Journal of Criminal Law* (2021) (85) (1).

Wolf S, 'The Legal and Moral Responsibility of Organizations' *In: NOMOS XXVII: Criminal Justice* (1985) 267.

LEGISLATIONS

Administration of Criminal Justice Act, 2015, No. 3, 2015.

Advance Fee Fraud and Other Fraud Related Offenses Act, Cap A6, Laws of the Federation of Nigeria, 2004.

African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

Australian Criminal Code Act 1995 (Cth).

Banks and Other Financial Institutions Act, 2020, No. 5, 2020.

Companies and Allied Matters Act, 2020, No. 3, 2020.

Companies and Allied Matters Act, 1990.

Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria, 2004.

Corrupt Practices and Other Related Offences Act, 2000, No. 5, 2000.

Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2004

Cybercrimes (Prohibition, Prevention, etc.) Act, 2015, No. 1, 2015.

Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, Pub. L. 111-203

Economic and Financial Crimes Commission (Establishment) Act, 2004, No. 1, 2004.

Economic Crime and Corporate Transparency Act 2023, c. 36.

Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004.

Harmful Wastes (Special Criminal Provisions) Act, Cap H1, Laws of the Federation of Nigeria, 2004.

Interpretation Act, Cap I23, Laws of the Federation of Nigeria, 2004.

Malabo Protocol on the Statute of the African Court of Justice and Human Rights, 2014.

Miscellaneous Offences Act, Cap M17, Laws of the Federation of Nigeria, 2004.

Money Laundering (Prohibition) Act, 2011, No. 1, 2012.

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007, No. 25, 2007.

Nigerian Extractive Industries Transparency Initiative Act, 2007, No. 8, 2007.

Penal Code Act, Cap P3, Laws of the Federation of Nigeria, 2004.

Petroleum Industry Act, 2021, No. 3, 2021.

Public Procurement Act, 2007, No. 14, 2007.Rome Statute of the International Criminal Court, adopted 17 July 1998, 2187 UNTS 90, entered into force 1 July 2002.

UN Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31, 2011

UK Bribery Act 2010, c. 23.

Sarbanes-Oxley Act 2002, Pub. L. 107-204.

Online Sources

Amnesty International. 'Nigeria: New Government must ensure Shell's Sale of its Niger Delta Oil Business does not worsen Human Rights Abuses 2023' <https://www.amnesty.org/en/latest/news> accessed 9 July 2026.

Nalt. 'Uniform Format and Citation Guide for Legal Research Writing in Nigeria 2023' <https://nalt.ng> accessed 9 July 2026.

National Oil Spill Detection and Response Agency (NOSDRA). 'Oil Spill Statistics 2010-2021.' Abuja: NOSDRA; 2022 <https://nosdra.gov.ng> accessed 9 July 2026.

Oceangate Engineering Oil & Gas Ltd. <https://oceangateoilandgas.net> accessed 9 July 2026.