

Week 6 – Liability of Companies (CIVIL & CRIMINAL)

Distinguish between civil and criminal wrongs: paying compensation for the loss of a wrongful act verses punishment and deterrence and personal liability of the company.

- ⇒ Civil claims can award exemplary or punitive damages
- ⇒ They will do so because a defendant's conduct shows "a conscious and contumelious disregard for a plaintiff's rights" and there is a need to deter a defendant from repeating the conduct (*Musca v Astle Corp Pty Ltd* (1988))
- ⇒ Legislation which empowers courts which hear a criminal case to make an award of compensation to a victim
- ⇒ **s769B** provides for both civil and criminal vicarious liability in relation to offences for breach of conduct in Chapter 7

Liabilities:

Primary	Secondary
⇒ "Personal" or direct when the company is taken to have committed a wrong itself	⇒ Vicarious liability (torts) employee and employer
⇒ Legal personality: individuals who control and manage the company ⇒ E.g. directors, senior managers	⇒ Company accepting liability because of the relationship with other people and their acts
⇒ The people in charge: 'the directing mind'	⇒ They are responsible
⇒ Intention of the company is the intention of those in charge	⇒ Vicarious liability i.e. employee liable and so is the employer under control and supervision
⇒ Organic approach = more difficult to determine in larger companies because a company is an abstract idea, however, they cannot do anything without human beings (i.e. the people who control and manage the company"	⇒ <i>Salomon v Salomon</i> : a company is a legal entity in its own right and the law should treat it as if it were an individual (can sue and be sued) (obligations & responsibilities)

PRIMARY

HL Bolton Co Ltd v TJ Graham & Sons Ltd [1957]

Lord Denning:

"... [a] company has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the directing mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability, the fault of the manager will be the personal fault of the company ... So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors and managers will render the company itself guilty."

- ⇒ Highlights the organic theory: equating responsibility of the wrong with the people in charge of the company = the fault element of the company
- ⇒ The company is identified with and is indistinguishable from the individuals who manage and/or control it (at least for the purposes of attributing liability).
- ⇒ This "organic" approach to corporate liability requires us to consider those people in the company whose mental state can constitute the "directing mind and will of the company" (generally but not always the board, the managing director or even particular directors of the company).