Plagiarism Report For '461877-426811.docx'

How does Viper work.....?

[+] Read more..

Location	Title	Words Matched	Match (%)	Unique Words Matched	Unique Match (%)
467055	Order:	158	10%	2	< 1%
469623	Order: 425844	226	14%	2	< 1%

Documents found to be plagiarised

Matching Content: 1%

Master Document Text

Dissertation proposal
Title: Corporate Crime: Holding Companies Accountable.
Aims and Objectives
As companies are growing to have an increasingly prominent impact on society, the need to hold them accountable when they commit crime has moved to the forefront of concerns, both internationally and internationally. Corporate crime has presented company and criminal law with the need to ensure that companies do not escape liability when they engage in criminal conduct. This has posed major problems, however, because criminal liability is traditionally based on individualistic principles and components. When such components are applied to collective entities, particular problems emerge. Several attempts have been made to impose liability on companies for criminal conduct, although there is disagreement as to whether they have proven to be effective in preventing and punishing such conduct. It is therefore necessary to outline and critically explore how the law in the UK approaches corporate crime, and whether improvements may be made in the quest to hold companies accountable, particularly from the perspective of whether collective or individual liability is the most effective. This forms the core aim of the dissertation.
History dictates that the conviction of companies for corporate crime does not fit in well with traditional principles of criminal law. It is therefore important to examine why this is the case, and how it may be remedied. Such an issue has lingered, as it even now appears confusing to some that a corporate entity may be convicted and punished as a criminal. The common approach during the 16th and 17th centuries was that a company 'is not indictable, but the particular members of it are'. Early attempts to hold companies liable were plagued by a variety of practical and theoretical hindrances – it simply could not be accepted that companies could harbour the necessary culpability and moral blameworthiness necessary to prove mens rea. From a practical perspective, the problem is that companies cannot physically appear in court, and attributing criminal conduct to companies meant that it was notoriously difficult for them to be held liable. It was not until the 19th century that the approach towards corporate criminal liability shifted, and thus emerged a general consensus that something should be done so that companies could be held criminally liable. The UK courts began to display increased willingness to impose liability on quasi-public companies for offences such as public nuisance. Criminal liability was gradually extended so that criminal liability could be imposed upon commercial companies for offences such as nonfeasance.
The increased impact that companies have grown to have on society over the years has fuelled the increased willingness to regulate and impose criminal liability on companies for their criminal conduct. As the 19th century came to an end, it had become clear that companies could and should be held liable for statutory crimes, and punished by fines. This brief historical overview demonstrates that two main factors fuelled the imposition of liability upon companies for criminal conduct. Much media attention was given to corporate disasters that had been caused by negligence, and which had resulted in many deaths. The second factor was that employment-related fatalities were unsuccessfully tried, revealing the inability to hold companies liable under traditional criminal law principles. It is therefore necessary to examine how companies may be held liable for criminal conduct, whether collective individual responsibility should be imposed, and how the law may be reformed to hold companies liable for criminal conduct.
Literature Review
Much academic attention has been given to this topic, and the courts have also sought to expand upon how the law may be applied to hold companies liable for criminal conduct. The identification doctrine arose as a consequence of the courts' attempts to apply mens rea to companies. Companies are not able to 'think' per se, and the courts avoided this problem by searching for a particular company member who directs the company's 'mind and will'. This approach was adopted in relation to all offences that were not based on vicarious liability. However, it has been recognised that the identification doctrine loses force when considered in the

context of large companies, within which decisions are typically made by several different individuals rather than a single member. The attribution of blame in such cases is problematic because they are rooted in ambiguous hierarchies, meaning that a single individual cannot easily be identified. Assuming that an individual could be located, it would then need to be proven that he/she harboured the requisite components of gross negligence manslaughter – death following a gross breach of duty, which posed a significant risk. Members of larger companies do not typically implement the decisions that they have made, rendering it notoriously difficult to impose liability.

An alternative approach is offered by tort law, which seeks to eliminate the problems that plague the identification doctrine. Under the aggregation doctrine, the criminal components of actus reus and mens rea may be attributed to a company, meaning that it may be held liable for a crime as a collective entity. This approach was traditionally applied by the courts, yet it was eventually repealed. This meant that the identification doctrine became the most commonly used approach towards corporate liability, particularly for gross negligence manslaughter. The strict manner in which it was applied by the courts however meant that liability could only be imposed in the most severe and restricted of cases. The doctrine was heavily criticised, which eventually resulted in Lord Hoffman's attempted to expand its scope and to instead query whether 'the act (or knowledge, or state of mind) was for this purpose intended to count as the act of the company'. It is therefore necessary for the individual in question to have the company's authority to make such decisions, yet it is not necessary for the individual(s) running the company to have made them. This approach towards corporate liability has received both praise and criticism. Clarkson for example argues that is problematic because it 'still requires an individual to be identified within the corporate structure whose acts and knowledge can be attributed to the company'. It has also been argued that, while companies are essentially 'only metaphysical entities', they can still be held liable if their 'rules, policies and operational procedures' indicate the requisite level of mens rea. Such an approach essentially avoids the application of the strict identification doctrine, because it applies an extreme form of the aggregation principle. It may therefore be argued that enforcing an approach based upon the aggregation doctrine would ease the problems posed by the identification doctrine, providing a potential alternative to the approach that is currently adopted in the UK.

In an attempt to adopt a more suitable approach towards corporate liability, the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007) was implemented. Under the Act, the statutory offence of corporate manslaughter is created, and the common law offence of corporate manslaughter following gross negligence is abolished. Attention is directed towards the cause of death, requiring that the management of the activities of the company have brought it about, and that it amount to a gross breach of duty or care owed to the deceased. Most importantly, liability for the offence cannot be imposed upon an individual, which has attracted much academic praise. Liable companies may be fined, and/or issued with a remedial and/or publicity order, indicating the Act's modernised and more appropriate approach towards corporate crime, as has been recognised in existing literature. Slye has for example noted that, because it attaches primary importance to a company's systems as causative of a crime, the number of individuals implementing the system becomes irrelevant. The company system itself is examined, meaning that attention is directed towards relevant issues, and the imposition of liability under the Act depends upon 'a form of ameliorated aggregation'. Furthermore, management failure remedies problems posed by the identification doctrine, because the involvement and participation of senior managers only need to form a substantial and not a complete proportion of the breach of duty or care. Therefore, when employees and non-senior members participate, the imposition of criminal liability will not be frustrated and the manager's role will not be undermined in relation to the practice of proving liability. The CMCHA 2007 has also been criticised by academics, mainly on the basis that it has not clarified what a non-senior member actually is, particularly an employee. This means that companies could outsource any important decisions that run a high risk of causing death, meaning that they may not be attributed to any particular, identifiable members. This has been recognised by Bebb, who argues that 'the legal debate as to whether a defendant is so senior as to embody the company will be replaced by a similar debate as to whether or not the defendants are senior managers…an issue that should be relevant to sentencing but not liability'.

Academic literature therefore recognises that, while the current system in the UK has seen some improvements, problems remain, indicating the potential need for further reform. The Act is also very narrow in its approach towards corporate crime, because it only imposes liability upon companies for organisational failures resulting in death. Reason for instance notes that 'most accident sequences, like the road to hell, are paved with good intentions – or with what seemed like good ideas at the time'. It is therefore necessary to explore the concept of corporate liability from various perspectives, and in relation to different types of criminal conduct, including manslaughter, environmental crimes, and fraud.

Methodology

The research will be based primarily on qualitative data, using primary sources such as legislation and case law, and secondary sources such as journals, textbooks and government reports. The current law, and cases pertaining to it, will be critically explored, in order to determine how criminal liability is imposed, and the components underlining it. The law will then be critically analysed, drawing upon various viewpoints set forth in existing literature and textbooks. This will enable the dissertation to evenly address arguments in favour of collective responsibility and individual responsibility. This combination of primary and secondary resources will enable arguments set forth in the paper to be challenged and developed more fully.

Structure of Dissertation

Introduction: This chapter will provide an overview of the topic, explain why it is relevant, and outline the various issues raised under the main research question. A brief outline of the structure of the dissertation and the main arguments that will be provided and developed will be presented.

Corporate Liability: A Historical Overview: This chapter will examine the historical development of corporate liability over the years, exploring the shift between the identification and the aggregation doctrines. Case law examples indicating the courts' perception of these doctrines will be provided and critically analysed, and the criminal law's approach towards corporate crime until the present will be outlined.

Corporate Liability in the UK: The Current Approach: This chapter will provide a critical overview of the current system of corporate liability in the UK. The focus will mainly be placed on corporate manslaughter under the CMCHA 2007, and attention will also be given towards corporate fraud under the Fraud Act 2006, the Insolvency Act 1986 and the Companies Act 2006. Analysis of these provisions will determine whether individual or collective responsibility is imposed under the current regime.

Individual and Collective Responsibility: This chapter will address the problems that plague the current legal corporate criminal regime in greater detail. This will then lead to a critical analysis of whether collective or individual responsibility should be imposed upon companies. The advantages and disadvantages of each form of responsibility will be explored in order to determine which is the most appropriate response to corporate crime.

A New System of Corporate Liability: This chapter will set out a number of proposals for reform, drawing upon the arguments presented thus far in the dissertation. How the current system may be reformed in order to gold companies accountable will be outlined, and the most effective sanctions will be explored.