CORPORATE LIABILITY FOR THE ACTS OF ITS AGENTS

A DISSERTATION

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by

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C O N T E N T S

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P R E F A C E

The Companies Act of 1948, does not, as it may be assumed, contain the fundamental principles of company law, owing to the fact that the Act is a consolidating and not a codifying statute. Reading the Act will therefore not lead to a clear understanding of company law. However, there are numerous cases and materials decided and written by learned legal personalities which facilitate understanding of company law. This paper is mainly based on the said materials.

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INTRODUCTION

The purpose of this paper is to examine under various heads the circumstances under which the law attributes liabilities to corporations. This purpose cannot be adequately fulfilled without first of all looking into the status the law confers upon a Company. Consequently it is intended, in the first chapter, to try and distinguish a company from other business associations. The question, "What is a Company", has been asked several times but no definite answer has been forthcoming. So, what is a Company? Is it an association of individuals united for a common object or objects? Is a Company just another name for a partnership or is it an agent for its members? What is it a Company has that other business associations do not have? Does incorporation elevate a Company to a Status above other associations?

The second chapter deals with the rather intriguing subject of corporate personality. Since the case of Salomon V. Salomon[1] it has never been doubted that a company, upon incorporation, attains the status of a legal person, quite distinct from the members composing it. Incorporation is a process that is preceded by registration of certain documents.[2] Upon registration of the documents the registrar certifies that the members composing the company shall be a body corporate.[3] Does this mean that the members from the date of incorporation acquire a dual personality? If so, which of the two personalities does a third party deal with? One of the effects of recognizing corporate personality is that a company holds property under its own name, but for the benefit of its members. Is a company therefore a trustee for its members? Does the law attribute to a company, as a legal person, all the characteristics of a human person? For instance, can a company fall sick and die, can it become insane, can it marry? In other words, to what extent does the law treat a company as a person?

Chapter three is intended to deal with the problem of corporate liability. The aswers to the first and second chapters indicate that a company enjoys almost equal rights in law as any other person.[4] Does the law also impose the same duties and obligations on the legal person? A company is an abstraction and can only act through human agents. To what extent can a company be held liable for the acts of its agents? As a principal is a company liable for ultra vires contracts entered into by its agents? What effect does the rule in Turquand's case have on the relationship between a company, its agents and third parties

who enter into transactions with the company through its agents?

Any torts and crimes are apparently ultra vires a company, for a company can only be formed to carry on lawful business.[5] Yet, companies are being convicted of crimes and being held liable in torts, every other day. On what grounds can such convictions and judgements against companies be justified? A principal may be held vicariously liable for the torts of his agents. Can a corporation be treated in the same way? English law does not recognize vicarious criminal liability, mens rea being required for the commission of a crime. A company has no will of its own, so how can it form mens rea? What acts, and by which servants of a company, are imputed to the company itself?

The company as a person exists only in contemplation of the law. Laymen dealing with the company cannot see it in the same light as would lawyers. And because of the limited nature of a company members cannot be held personally liable for the company's acts. So, what protection does the law afford to third parties? Presently there are no firmly laid down principles on which corporate liability is based. Each case is treated according to the surrounding circumstances.[6] Can this uncertainty be removed as well as other problems surrounding corporate liability?

In conclusion, it is intended to critically analyse the law relating to corporate liability. Is it equitable and in the interest of public policy to let an individual repudiate his personal liabilities by the act of self incorporation,[7] or compensate the estate of an individual who incorporates his business and gets killed while running it,[8] under the Workman's Compensation Legislation? What possible reforms can be effected in this area of the law?

CHAPTER 1 : WHAT IS A COMPANY?

We shall not even start to pretend to define the term "company" for three main reasons. First, the companies Act[1] upon which companies depend for their creation and continued existence, and which for the purpose of clearing any doubts, should give a proper definition of what it creates, does not satisfactorily define what a company is. The relevant section[2] of the Act reads: "'Company' means a company formed and registered under this Act or an existing company. "Existing company means a company formed and registered under any of the repealed ordinances. Repealed Ordinances means, the Indian Companies Act, 1882, of India (as applied to Kenya), the Companies Ordinance, 1921, and the repealed Companies Ordinance. "The repealed Companies Ordinance" means Companies Ordinance repealed by this Act. This does not do much by way of defining the term "company", because a real definition ought to show the distinctions between a company and other business organizations. Secondly, an attempt at defining a company may also include the unenviable task of defining the subtle difference between a company and a corporation, for some writers think that there are companies which are not corporations.[3] And thirdly, it is more rewarding to define the functions of a company rather than attempt to define what it is, in view of past unsuccessful attempts at such a definition. The boldest of such attempts was the definition given hesitantly by Frank Evans in his article, "What is a Company?",[3b] in which he said:

> "A Company is an association of two or more individuals united for one or more common objects, which, whether incorporated or unincorporated, is (a) In the Act or charter by or under which it is, called a 'company' or (b) If it is not so constituted and called, is not an ordinary partnership, or a municipal or non-trading corporation, or a society constituted by or under a statute, but an association whose members may transfer their interests and liabilities in or in respect of the concern without the consent of all the other members".

This definition excludes ordinary partnerships, societies and non-trading corporations from the application of the term "company". This leaves us with a company formed for the purpose of carrying on business for gain. It is for this type of company that the word company is normally reserved. The differences between this kind of company and other associations are as follows: A corporation is not simply an association of individuals, but it is itself a person, albeit an artificial one. It is distinquished from a mere association of individuals by the fact that it is an entity distinct from the individuals forming it and its capacity to acquire rights or incur obligations is distinct from that of its

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members. The rights and obligations are acquired or incurred for the body as a whole and not for the individual members. This means that if a group of persons wish to incorporate themselves and they contribute money and buy property in the name of the coropration they form, they cease to have any personal interest in that property, so that even if an individual member wishes to withdraw from the corporation he cannot claim any of the property for himself. This is because the property a corporation acquires is its own property, distinct from that of its members. Consequently, in the event of the corporation being wound up the liquidator cannot claim anymore than the property the corporation holds. Members of corporations can have their liability limited by shares or by guarantee thereby avoiding personal liability. As a result, if the coporation is being wound up they will not, without their consent be required to contribute more than the nominal value of their unpaid shares or an amount exceeding the guaranteed sum.

A partnership on the other hand is not a juristic person. It must be formed by at least two persons and a maximum of twenty. If more than twenty people wish to carry on a business for gain they must incorporate themselves[4] otherwise their existence will be disregarded by the law.[5] A partnership is regulated by the general law of agency. Under the partnership Act[6] every partner is an agent of the others as well as being an agent of the firm. Consequently when one partner contracts in the firm-name, the contract binds the firm and the other partners. Usually a partnership is created by a contract between the partners. It need not be created formally, it may be created and determined through an oral agreement or even by conduct.[7] And because a partnership is not a legal person, and it is created by contract, the death or withdrawal of one partner normally results in the dissolution of the partnership. While the partnership still lasts each partner is individually liable for the debts of the partnership and even if a judgement is entered against all the partners jointly it may be enforced against one partner only. On the other hand if the firm runs into financial difficulties each partner may find the creditors of the firm seeking to have him declared a bankrupt. A partnership, may like a company, sue and be sued in its own name, but since as already stated a partnership is not a legal entity separate from its members, an action by or against it is virtually an action by or against the partners themselves. The only advantage of this lack of legal personality is that, since partners are held personally liable for the debts of the partnership, tradesmen may be more willing to advance credit to

the partnership, especially if one or more of the partners is a man of means.

However, it is possible to form a limited partnership under the limited partnerships Act.[8] Under this kind of partnership all partners but one can have their liabilities limited at the expense of being excluded from participating in the management of the business. A limited partner contributes to the firm a certain amount of money and thereafter he is not responsible for the debts of the firm above the amount of his contribution. This means that, as in a limited company, he cannot be made a bankrupt if the firm is wound up. In addition to the limited partners there must be at least one partner whose liability is unlimited. This one is called the general partner. He manages the business, bears all the risks, and consequently takes the lion's share of the profits.

Limited partnerships are however very rare because businessmen prefer to carry on business in the form of registered limited companies thereby forcing other types of companies into oblivion. The reasons for this preference of the registered companies have been briefly alluded to in the previous pages. These will be dealt with in greater detail in the next chapter, which discusses the concept of corporate personality, its scope and consequences.

CHAPTER II : CORPORATE PERSONALITY

A registered company is incorporated by applying for registration which is effected by filing with the Registrar of Companies, among other documents, the Memorandum and the articles of association.[1] The memorandum states, inter alia, the objects for which a company is being formed, while the articles regulate the rights of the members of the company among themselves and the manner in which the business of the company shall be conducted. On the registration of these documents the registrar certifies that the company is incorporated and in the case of a limited company, that the company is limited.[2] The fact of incorporation may be equated with the birth of a corporation and the certificate of incorporation with its birth certificate. The company acquires a separate existence and legal status and carries its own name. Section 16 (2) of the companies Act provides:

> "From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with other such persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, with power to hold land and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Act".

This section then, confers corporate personality upon a company immediately it is registered. As already briefly stated in the last chapter, the concept of corporate personality has certain fundamental attributes from which all other consequences flow. The most fundamental attribute of a corporation is that it is a legal person, capable of acting through its agents and officers, of suing and being sued, of taking and holding property, of contracting in its own name and of continuing to exist independently. Thus a company is a person in its own right. But because it has no body of its own it is often described as an artificial person as opposed to a human being who is a natural person. The jurisprudential definition of a person is "a subject of rights and duties", and in addition to human beings, it is possible for the law to recognize artificial persons.[3] Delivering judgement in the case of Salomon V. Salomon,[4] Lord Halsbury stated:

> ". . . Once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, . . . and the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are".

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The effect of incorporation then is to completely separate the members of a corporation from the corporation itself, so that the debts and obligations incurred by a company in the course of its business are those of the company and the company's members are not legally responsible for them to the company's creditors. In a popular sense, a company may in every case be said to carry on business for and on behalf of its shareholders, but this certainly does not in point of law constitute the relation of principal and agent between them or render the shareholders liable to indemnify the company against the debts which it incurs.[6]

The complete separation of a company and its members was confirmed for once and for all in the much celebrated case of Salomon V. Salomon & Co. Ltd., which has already been severally quoted in this paper and whose facts were as follows:

Solomon had a boot manufacturing business. He sold the business to a company which he formed. There were seven members, his wife, daughter and four sons, who took one pound share each, and Solomon himself who took 20,000 shares. The price paid by the company to Solomon was £30,000, but instead of paying him cash, the company gave him 20,000 fully paid £1 shares and £10,000 in debentures. Owing to strikes in the boot trade the company was wound up. The assets of the company amounted to only £6,000 out of which to pay the £10,000 due to Solomon and secured by debentures, and a farther £7,000 due to unsecured creditors. The Unsecured creditors claimed that as Solomon & Co. was really the same person as Solomon, he could not owe money to himself and that they should be paid their £7,000 first.

The court of first instance and the court of Appeal, held that the company was a mere sham, and an alias, agent, trustee or nominee for Solomon who remained the real proprietor of the business. As such he was liable to indemnify the company against its trading debts. But the House of Lords unanimously reversed this decision and held that the company had been validly formed, since the companies Act merely required seven members holding at least one share each. The Act said nothing about the members being independent or that they should take a substantial interest in the undertaking, or that they should have mind and will of their own. Hence the business belonged to the company and not to Solomon, and Solomon was its agent not it the agent of Solomon.

Writing under the topic of "The Nature of Corporations", the Earl of Halsbury[7] states in part:

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". . . The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to be incorporated and possess but a nominal interest in its property, or hold their interest in trust for him. Notice to an individual who happens to be a member of a corporation aggregate is not equivalent to a notice to the corporate body; and where an action is maintainable by and in the name of a corporation it cannot be maintained by the individual members of the corporation. After the dissolution of a corporation the members, in their natural capacities, can neither recover debts which are due to the late corporation nor be charged with debts contracted by it".

This statement of the law as contained in the Laws of England was made by one of the judges who gave judgement in Solomon's case and expresses in a concise form the principles enunciated in that case.

Although the significance of this separation of a company from the members composing it was not fully understood, even by the courts, before the judgement in Solomon's case, the concept of corporate personality was recognized in English law even before that famous case. For instance, in the case of Farrar V. Farrars Ltd.,[8] it was held that a sale by a person to a corporation of which he is a member is not, either in form or in substance, a sale by a person to himself. To hold that it is would be to ignore the principle which lies at the root of the legal idea of a corporate body, and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of a corporation to the corporation itself is in every sense a sale valid in equity as well as in law. Salomon V. Salomon is however important in that it put a seal to the concept of corporate personality, thereby clearing any doubts that lingered in the minds of the lawyers as to the implications of the separation of a company and its members. The case opened up new vistas to company lawyers and the world of commerce. It established the legality of the one-man company, that is, a company which although composed of at least two members is in fact dominated by one of the members who holds almost all the shares and the other member or members are only nominal members who are there only for the purpose of satisfying statutory requirements. Secondly the decision in that case showed that incorporation is as easily available to the small private partnership and sole trader as it is to the large public company. And thirdly it was revealed that it is possible for a trader to limit his liability not only to the money which he put into the enterprise but also to

avoid any serious risk by subscribing for debentures rather than shares.[9] Apart from these, many other benefits flow from incorporation of a company:

(i) Limited Liability

Since a corporation is a separate person its members are not liable for its debts, nor is a company liable for the debts of individual members. Members of a limited company can limit their liability, either by shares, in a company limited by shares, or by guarantee, in a company limited by guarantee. In the case of a company limited by shares each member is liable to contribute, when called upon to do so, the full nominal value of shares held by him, if they are not already fully paid. His liability is therefore limited to the unpaid nominal value of his shares. If his shares are fully paid he is, in the absence of any provision to the contrary, free from all liability. In the case of a company limited by guarantee each member is liable to contribute a specified amount to the assets of the company in the event of its being wound up while he is a member. A member, therefore, has no liability until the company is wound up and even then his liability will be limited to the specified amount. As a quick reminder, it should be pointed out (yet again) that unincorporated bodies are not legal persons and transactions entered into on their behalf, unlike in incorporated associations bind the officers who enter into them or individual members if the officers have the authority to enter such transactions. Such individuals are bound to the full extent of their personal property, unless otherwise provided by the terms of the contract of their association.

(ii) Holding Property

As a legal person a corporation is capable of holding its own property. Corporate personality enables the property of a corporation to be distinguishable from that of its members. This means that the property held by the members of a company is their own property and the company has no interest, whatsoever, in it. Consequently, in the event of the company being wound up, even if its assets are incapable of satisfying debts owed by it, the liquidator or creditors cannot seek to attach property personally held by individual members. Conversely, individual members have no interest, at all, in the property held by the company. Members have no direct proprietary rights to the company's property but merely to their shares. This distinction between the property of the members from that of their company is so rigidly drawn that it has been held in one case[10] that because a shareholder has no legal or equitable interest in the company's property, he cannot insure

it, even though he is the sole shareholder and the company is as a result of self incorporation. Similarly, a landlord wishing to benefit from the Landlord and Tenant Act[11] will find himself unable to repossess premises under occupation by a tenant, if his intention is that his company and not himself should occupy the premises.[12]

It should, therefore, not be presumed that the legal consequences of corporate personality are always beneficial to the shareholders. On the contrary it is quite often unpredicatable what the consequences might be. For instance, a parent company will have no insurable interest in the assets of its subsidiary companies even though wholly owned, for the rule that a company is distinct from its members applies equally to the separate companies of a group.[13] Hence the contention that sometimes the concept of corporate entity works like a bommerang and hits the man who was trying to use it.[14]

An unincorporated association may too hold property,[15] but such property is the joint property of all the members, unlike in a corporation where members have no interest in the company's property or any part of such property.

(iii) Perpetual succession

Because a corporation is an abstract person it can exist perpetually. The death or withdrawal of members from the corporation does not affect the corporation, neither does it occassion any inconvenience to the remaining members through the necessity of having to withdraw some of the property or even terminate the association altogether as might happen if no corporation existed. This is because a member has no right to any of the company's assets. His only interest in the company is confined to the share or number of shares he holds. The shares in a company are easily transferrable, as they are movable property.[16] Consequently upon the death or withdrawal of a member his shares can be transferred to another person who immediately steps into the shoes of the departed member. A company, therefore, never dies but exists indefinitely unless brought to an end by operation of the law or other specified means.

Incorporation has other advantages besides the above mentioned. These include the right to sue and to be sued in the corporate name, and the right to use the means of floating charges to raise capital. But also there are certain disadvantages attached to incorporation. These include the necessity to follow certain formalities while

incorporating a company, thus making the affairs of the corporation a public affair, and the expenses required to effect incorporation and also in winding up a company. A partnership can be formed orally and be dissolved likewise, and while in existence it can conduct its business privately, unlike a corporation whose registered documents are available for inspection by the public.

Those then are the consequences of incorporation. Incorporation is a facade behind which shareholders of a company can continue to conduct their business without incurring personal liabilities. Incorporation creates a veil which hides members of a company from the eyes of the law. However, there have been instances when the courts have felt themselves constrained to ignore the corporate entity and to treat the individual shareholders as liable for a company's acts or entitled to its property or to regard the various companies of a group as one entity. This process is often referred to as lifting the veil of incorporation. It is however beyond the scope of this paper to deal with all the instances in which the veil is lifted. Suffice is to say that these cases are few and they are the exception rather than the rule. Lifting the veil does not operate to destroy the separate legal personality of a company. In interpreting a section similar to Section 33 of the Companies Act of Kenya, in the case of Jarvis V. Carabott,[17] Ungoed-Thomas J. said that the Act (when it orders a company to wind up if the members fall below the statutory minimum)[18] does not prohibit a company having fewer than the legal minimum, and what is not expressly forbidden is permitted. Arising from this it can be concluded that rather than destroy the corporate entity under Section 33 when members fewer than the legal minimum continue to conduct business for a period of more than six months, the Act actually provides for the punishment of the said members by imposing personal liability upon them.

CHAPTER III : CORPORATE LIABILITY

Although a corporation is regarded in law as a person, it is subject to certain natural and legal limitations that natural persons are not subject to. First, a corporation has no physical body. It has no hands, no legs, no mind or will of its own. Consequently, a corporation cannot act personally. It cannot enforce its legal rights or discharge its legal obligations without the agency of human persons. When, therefore, we say that a company has done an act, we mean that human agents have done the act for the company.

Secondly, a company may not legally carry out any activity which is not expressly or impliedly authorized by statute or by the list of objects and powers in its memorandum of association. Thus, a company's legal personality exists only for the particular purposes of its incorporation as defined in the memorandum of association. Any act done by or on behalf of the company, beyond these stated objects is ultra vires, that is, beyond the company's powers. It is therefore null and void.

An ingenious perversion of the doctrine of ultra vires has sometimes led to the contention that in as much as the funds of a company can be applied only in the promotion of its objects, they cannot be applied in making good damage caused by the fraud, negligence, or misconduct of its agents or servants. It is further contended that, since the company's objects are specified in its memorandum of association, all wrongs are therefore ultra vires the company and it can never be held liable for such wrongs. This argument may be sound and logical, but it is not the law and it is based on a wrong interpretation of the doctrine of ultra vires. The fact that the memorandum of association does not anticipate commission of wrongs does not mean the company is incapable of committing them. On the other hand there is nothing in the doctrine of ultra vires that protects a company from liability for the consequences of the acts of its agents, done by them on behalf of the company in the course of the company's business. Lord Cranworth clarified this issue by stating:

> ". . . The objects of a company can only be accomplished by the agency of individuals and there can be no doubt that if the agents employed conduct themselves fraudulently, so that if they had been acting for private employers, the persons for whom they were acting would have been affected by their fraud, the same principles must prevail when the principal for whom the agents act is a corporation. . ."[2]

The above statement seems to express the view that a corporation is subject to the doctrine of vicarious liability like any other employer

and that, like any other principal, a company can ratify an act which has been done on its behalf by its agents without authority. Consequently a company will find itself held liable for torts and crimes committed by its agents. However, in order for the company to be held liable for the criminal and tortions acts of its agents, the same must be committed in the course of ~~ultra~~ intra vires duties in pursuance of the company's stated objects.

(i) Corporate Liability in Contract

Before its incorporation, a company has no capacity to contract, nor can anybody contract on its behalf as an agent because an act which cannot be done by the principal himself cannot be done by him through an agent. Contracts purported to be entered into on behalf of the company before its incorporation are generally referred to as preliminary contracts. A preliminary contract cannot be ratified by the company after incorporation.[3] If a contract is purported to be made on behalf of a company that does not exist, the contract is null abinitio. Consequently, neither the company when eventually formed, nor the director whose signature forms part of the company's purported signature, can sue or be sued on the contract.[4]

But even after incorporation, a company can only do the acts authorized by its memorandum of association. Any purported act which is not so authorized is ultra vires the company and therefore null and void. This principle was established as early as 1875 in the case of Ashbury Railway Carriage and Iron Co. V. Riche,[5] decided by the House of Lords.

In that case the objects of a company were to make, and sell or lend on hire, railway carriages and wagons and to carry on the business of mechanical engineers and general contractors. The company entered into a contract in relation to the construction of a railway in Belgium. The question in issue was whether the contract was valid. It was held ~~that~~ to be ultra vires the company, and altogether void. In delivering judgement, Lord Cairns L.C., stated:

> ". . . If that is the purpose for which the corporation is established it is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is necessary so to state, negatively, that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified".

As a corollary of the above it was further held that the contract, being ultra vires and void at its inception was incapable of ratification

even by the unanimous consent of all the shareholders.

Where, therefore, a company enters into ultra vires contracts, no legal relationship or effect ensues from them. If the company has expended cash upon such transactions, it can recover it, provided that it can be traced according to the rules of equity relating to tracing of money. If the transaction was for the transfer of goods, either by or to the company, no property passes.[6]

Contracts with a company are of necessity concluded with persons acting in a representative capacity (as noted earlier on) and are subject to the general principles of the law of agency. But a company has its powers to contract confined to the objects stated in the memorandum of association and all parties dealing with the company are deemed to have read and understood the company's documents, and to have knowledge of the scope of the company's authority. For this reason the law relating to the validity of contracts with companies has passed through a unique process of development, resulting in a number of special rules,[7] the most notable of which is the rule in the famous case of, Royal British Bank V. Turquand.[8]

The rule in this case seems to be that, persons dealing with a company and contracting in good faith may assume that acts within its constitution and powers have been properly and duly performed, and are not bound to inquire whether acts of internal management have been regular. Unless put on inquiry, a person dealing with a company is entitled to assume that those who purport to have authority to act for the company actually have that authority.[9] If this is the case the rule in Turquand's case seems to modify the doctrine of constructive notice.

According to the doctrine of constructive notice, the legal effect of transactions with companies depends on the operation of the rule that all persons dealing with a company, have either actual, or constructive notice of the Act under which the company is incorporated and of its public documents.[10] They are thus affected with notice of the provisions therein contained regarding the contractual powers of the company and its representatives. The validity of the transactions depends on the third party's knowledge, or lack of it, of the company's powers to contract. It is therefore, prudent for persons dealing with a company to see that the acts which a company is purporting to do are within the the general authority of the company.[11] The doctrine of constructive notice operates in regard to contracts ultra vires the company. Such contracts are invalid because the other party is deemed to know that they are beyond the powers of the company. If a contract is beyond

the powers of a company, the company can repudiate it with impunity because the contract is void ab initio. On the other hand, if the agent purporting to act on behalf of the company had no authority to act, any contract he might enter into with a third party is a nullity unless the company chooses to ratify it, which it can do if the said contract is within the scope of the company's powers. Contracts beyond a company's powers and contracts within its powers, but beyond the powers of its agents should therefore be distinguished. The former are void ab initio while the latter are void unless ratified by the company.

When a company appoints an agent, it is bound by contracts made within the usual or ostensible scope of his authority, unless the other party knows that the agent has no actual authority to conclude such contracts, or has reasonable notice of that fact.[12] Notice, actual or constructive of the scope of the actual authority of an agent, is effective to nullify any greater apparent authority. The registration of documents under the companies Act is sufficient notice for this purpose. The contents of the documents effectively modify the inferences that might otherwise have been drawn from the conduct of the company. The directors of a company, for instance might conduct themselves in such a way that it might to a third party appear that the directors have unlimited contractual powers, as is the case with partners in a partnership. Hence, the statutory provision for the registration of the memorandum and articles of association is regarded as a device for restricting the ostensible authority of the Company's officers ". . . It seems to us that the directors, unless restrained by an Act of Parliament or the deed (Predecessor of the Memorandum) would have all the authority given to partners by the rules of the common law."[13]

The doctrine of constructive notice does not operate where, by express representations, the company makes it appear as if its agent has ostensible authority. If the company expressly asserts that its agent has certain power, it ceases to be necessary for the other party to go to the articles to find what the agent's powers are. Consequently contracts by such an agent are binding to the company, even though the agent did not have the powers he was asserted to have. It is not open to the company to say that its representation should have been treated with the deepest suspicion and should not have been acted on until its accuracy had been verified by a search of the company's documents.[14] Furthermore, not everything a company does is noted in its documents. The documents may simply say that certain acts shall be done only by

the general meeting or by the board of directors. But a general meeting may be convened by an improper notice, or it might pass a resolution authorizing an act while a quorum has not been realised. In otherwords there might be some irregularities in the exercise of authority by the company's organs, though duly appointed. Will a third party dealing with the company still be deemed to have constructive notice of the company's internal irregularities?

The indoor management rule enunciated in Turquand's case suggests that while those contracting with a company might be deemed to know what is in the company's public documents, they should not be deemed to know what was or was not in the company's minutes books, for these books were not open to them. Consequently it would be unreasonable to impute to them notice of matters pertaining to the indoor management of the company.

The rule, therefore, operates as a presumption in favour of third parties, that the internal proceedings of a company are in order. The presumption is however rebuttable where the circumstances are such as to put the third party on inquiry. The position put in a nutshell is that provided that everything appears to be regular so far as this can be checked from the public documents, an outsider dealing with a company is entitled to assume that all internal regulations of a company have been complied with, unless he has knowledge to the contrary or there are suspicious circumstances putting him on inquiry.

(ii) Corporate Liability in Torts

In as much as a corporation is a legal person without a body of its own, it is not capable of acting in propria persona, but acts only through its agents or servants. All the acts, and therefore, all the wrongful acts, of a body corporate are infact the acts of its agents or servants though imputed in law to the corporation itself. The liability of a body corporate is therefore a vicarious liability in all cases.[15] Corporate liability in torts is governed by the same rules as those which determine the liability of any other principal.[16]

For a long time, only the principles of the law of agency were applied to determine tortions liability of corporations. For instance in the case of, Citizens Assurance Co. V. Brown,[17] Lord Lindley said:

> ". . . If it is once granted that corporations are for civil purposes to be regarded as persons, that is, as principals acting by agents and servants, it is difficult to see why the ordinary doctrines of agency and of master and servant are not to be applied to corporations[18] as well as to ordinary individuals. . ."

The court in this case rejected the idea of imputing malice to a corporation and at page 426 Lindley further stated:

". . . To talk about imputing malice to corporations appears to their Lordships to introduce metaphysical subtleties which are needless and fallacious . . ."

But Lord Lindley's views that a coporation's liability for the torts of its servants should be governed by the ordinary law of agency and that a corporation could never act personally were departed from a few years later in Lennard's Carrying Co. V. Asiatic Petrolerum Co. Ltd.[19] In this case, a ship and her cargo were lost at sea owing to the unseaworthiness of the ship. The director of the company which managed the ship on behalf of its owners knew or ought to have known that the ship was unseaworthy. He nevertheless permitted it to put to sea and it was lost. It was held that the director was the directing mind and will of the company and therefore his knowledge was the knowledge of the comapny. Consequently, his fault was also the fault of the company. The rule enunciated in this case is referred to as the alter ego, doctrine or the organic theory. Under this doctrine a company is personally held responsible for the acts of its officers in high places whose acts are regarded as the acts of the corporation itself. Thus, where the law insists on personal fault and disregards vicarious liability, a corporation will not be able to escape liability on the ground that it has no body, mind or will of its own, with which to commit wrongful acts. But it must be emphasised that only certain officials of a company are capable of binding the company in the manner described above. A distinction must therefore be drawn between the primary representatives of a company and its servants. For instance, the acts of individual directors may be imputed to a company, even though the company's board of directors did not formally authorise such acts. A case in point is the case of Bolton Co. Ltd. V. Graham & Sons Ltd.[20] Delivering judgement in this case, Denning L.J., said:

". . . 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 mind or will. Others are managers and directors 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 . . . whether their intention depends on the nature of the matter under consideration, the relative position of the officer or agent, and other relevant facts and circumstances of the case . . ."

It should also be noted that the organic theory applies only where the company would otherwise escape liability if the general principles of the law of agency and vicarious liability were employed.

But holding a company liable in torts seems to be contrary to the principle established in Ashbury's case. According to that case, a company can only be held liable for acts done by its servants or agents,

ultra vires the objects of the company. Lord Cairns, in giving judgement said that a company "cannot" be liable for ultra vires acts. The word "cannot" suggests that a company has no capacity to do ultra vires acts. If he had said "should not" the position would have been that a company has the capacity, but no authority to do acts beyond its stated objects. Dr. Goodhart in his article entitled, Corporate Liability in torts and the doctrine of ultra vires,[21] seems to agree with the contention that a corporation is incapable of committing torts. He contends that since an ultra vires contract is not binding on a corporation, to hold a corporation liable for ultra vires torts would be contrary to the law of agency and of master and servant. A corporation, he says is nor liable for torts committed in pursuance of an ultra vires enterprise because it cannot employ a servant to do the act, even if, it were done rightfully. If this were the law, it would occasion great injustice and hardship to third parties who are injured by agents of a corporation in the course of an ultra vires transaction. The English authority commonly cited for the proposition that corporations are exempt from liability for ultra vires torts in Poulton V. London & S.W. Ry.[22(a)] A railway company had statutory authority to arrest passengers for non-payment of their fees, but not for any other reasons. The stationmaster arrested a passenger for refusing to pay the freight payable for a horse. The railway company was held not liable for the act of the stationmaster because, "The railway company having no power themselves, they cannot give the stationmaster any power, to do the act."[22(b)] The court held the view that in the absence of any proof of express authority the stationmaster was acting beyond the scope of his employment and the company was therefore not liable. Whatever the reasoning of the court was, this decision is both unjust and contrary to public policy. Professor E.H. Warren,[23] strongly contests the view expressed in the case. He starts by asking, "Is the law that a statutory corporation has no legal capacity to do ultra vires acts?" He then gives a hypothetical case whereby a company is formed to manufacture bicycles; finding that the company is running into financial problems the directors decide to run an omnibus service between two towns, quite contrary to the company's stated objects. Due to the negligence of one of the drivers a third party gets injured. The driver is a man of straw and consequently he cannot pay damages. Running an omnibus service is ultra vires both the directors and the company, because it is not incidental to the manufacture of bicycles. If the law were as stated in Ashbury V. Riche or in Poulton V. London & S.W. Ry, then, the injured party would have no remedy. Yet he is not at fault at all.

While a third party contracting with an agent of a company is presumed to have notice of the agents authority or lack of it, to contract, a pedestrian who is knocked down by the company's omnibus, in the hypothetical case, has no means of knowing that the driver of the bus has no authority to drive that bus. In an American case[24] which was dealing with tortions liability of corporations, it was stated:

> ". . . The truth is that with the great increase in corpo corporations in very recent times and in their extension to nearly all the business transactions of life, it has been found necessary to hold them responsible for acts, not strictly within the corporate powers, but done in their corporate name and by corporate officers who were competent to exercise all corporate powers. When such acts are not founded on contract, but are arbitary exercises of power in the nature of torts or are quasi-criminal, the corporation may be held to a pecuniary responsibility for them to the party injured."

The American position, thus affords an answer to the School of thought that maintains it is contrary to established legal principles to hold a company liable for acts beyond its powers. The American court seems to have asked itself the question: "If a company can be held liable only for ultra vires acts, then who will be responsible to third parties who get injured in the course of a company's ultra vires activities." And finding that the public will be imperilled by the irresponsibility of the ever increasing companies, the court found it necessary to hold companies responsible for tortions acts beyond their powers.

The view that corporations are incapable of committing torts or any other wrongful acts is based on a wrong interpretation of the memorandum of association. It is true that the memorandum is meant to limit corporate activities to the objects stated in its objects clause. But it should be emphasised that the limitation is as to the company's authority to do any other acts and not to its capacity. With all due respect to Lord Cairns,[25] the learned gentleman seems to have confused the two words. Professor Warren,[26] in distinguishing between corporate authority and corporate capacity says that ". . . Although the legislature did not intend that the corporation should have authority to commit a tort, it did intend that it should have capacity to commit a tort. A command to the corporation to use only lawful means in attaining its objects is not equivalent to imposing a legal incapacity to use unlawful means. . ."

For the reasons set forth above, it is submitted that the courts, when dealing with a statute of incorporation, ought to interpret that statute as conferring general legal capacity upon the corporation unless the intent of the legislature is clear to confer special legal

CRIMINAL LIABILITY

It is difficult to find justification for holding a corporation liable for torts committed by its agents, it is even more difficult to justify the conviction of a corporation for crimes committed by its agents. The problems of corporate liability in contract and tort have been, more or less, solved by the principles of agency and vicarious liability. The corporation is not, ~~so~~ in the eye of the law, so impalpable, abstract or metaphysical that it cannot be regarded as a principal or master. Like any other principal it can enforce and be bound by the contracts of its human agents acting on its behalf. Like any other master it is responsible for the torts committed by its servants acting within the scope of their employment. In Criminal law, however, the doctrine of vicarious liability is confined within very narrow limits ". . . In the case of all ordinary common law offences, the law does not regard a master as having any such connection with acts done by his servants as will involve him in any criminal liability for them (whatever may be his liability in a civil action of tort or contract), unless he has himself actually authorised them or aided and abetted them.[28] However, there are exceptions to the above rule. Vicarious liability of a master for offences committed by his servants is recognised in cases where the law imposes absolute liability,[29] in public nuisance,[30] and in criminal libel.[31]

In all the three instances mentioned above, the master was convicted of offences committed by his servants without his authority or knowledge. Today, the law has been developed so much that corporations are convicted for various sorts of crimes.

Before corporations could be held subject to general criminal liability, certain obstacles had to be overcome. Firstly, criminal courts expected the prisoner to appear, before them, in person and did not permit appearance by attorney.[32] This obtacle was removed by the enactment of the criminal Justice Act (of England) of 1925.[33] Secondly, it was argued that any crime is necessarily ultra vires a corporation. Professor Winfield argues that, this contention is based on the fallacious supposition that civil capacity and criminal responsibility are governed by the same considerations. "That is not so. A minor has no legal capacity to make certain contracts, but he may still be criminally liable for obtaining credit by fraud."[34] The third problem is that a corporation can only act through agents. It is incapable of any acts of understanding, and it has no will to exercise. A fortiori, it is said that a corporation is incapable of states of mind which may have legal significance, such as volition, knowledge, intention, belief, negligence, malice, or mens rea.

The last two problems were solved in two ways. Firstly by holding that a corporation is vicariously liable for the acts of its agents where a natural person would similarly be liable, for instance in public nuisance at common law,[35] or when a statute imposes vicarious responsibility.[36] And secondly by taking the bodies and minds of the company's officers and servants, to supply its lack of mental and physical faculties. Thus the organic theory which sprang from Lennard's case, was applied in later cases, although in none of them was the case mentioned.

The earliest development in criminal liability of corporations took place in cases where a statute imposed a duty upon a corporation to act and no action is taken. For instance, in, R V. Birmingham and Gloucester Railway Co.[37] a corporation was convicted of failing to fulfil a statutory duty, namely omitting to repair a highway. Four years later, a corporation was convicted of obstructing a highway.[38]

The most important development in criminal liability of corporations occured in 1944, when it was held in three cases that a corporation may be held liable for acts of its employees which would not render a natural person, in the same situation, liable.[39]

In D.P.P. V. Kent and Sussex Contractors Ltd.[40] a corporation was charged with giving false information with intent to deceive. The company's transport manager signed and issued a form containing false information about the company's fuel usage. It was held that if a responsible agent of a company acting within the scope of his authority puts forward on its behalf a document which he knows to be false and by which he intends to deceive, his knowledge and intention must be imputed to the company. This decision was approved in R V. I.C.R. Haulage Co. Ltd.[41] In this case, a company, its managing director and nine other persons were charged with conspiracy to defraud. It was argued that a company is incapable of forming mens rea, so it could not be guilty of conspiracy. However it was held that a limited company is capable of conspiracy to defraud, since the acts and intention of its agents is imputed to it. ". . . the acts of the managing director were the acts of the company and the fraud of that person was the fraud of the company."[42] The third case, Moore V. Bresler Ltd.,[43] went further than the other two. The sales manager and the general manager of a company, sold, with the object of defrauding the company, certain of the company's goods intended for sale. And contrary to the Finance Act they produced a document that was false in a material particular with intent to deceive. It was argued that the officers had no authority to sell the goods and in any case they had intended to pocket the proceeds, so the company could not be liable. It was held that the fact that the officers had intended to pocket the proceeds does not detract from the fact that the sales were made and the officers had the authority to sell.

Welsh,[44] criticises Moore V. Bresler, for "blurring the distinction in law between the agents of a corporation and the legal persona itself," that is, the case makes no clear distinction between the "brains" and the "hands" of the corporation. If this is true, then the situation has since been remedied by the decision in Bolton V. Graham,[45] where the distinction was clearly made between mere servants or hands and the brains of a corporation. A similar distinction was made in Magna Plant V. Mitchell,[46] where it was stated that only the conduct and the accompanying mental states of persons in control of the corporation may be imputed to the corporation. "Knowledge of a servant cannot be imputed to the company unless he is a servant for whose actions the company is criminally responsible and. . . that only arises in the case of a company where one is considering the acts of responsible officers forming the brain. . . "

The courts seem to have succeeded in going round the requirement of mens rea in certain offences.[47] Conviction of a corporation is, however, subject to certain limitations. A corporation can only be convicted of offences which are punishable with a fine. It is inconceivable that an official of a company acting within the scope of his employment can commit offences such as rape, bigamy, incest, or perjury, unless he is held liable as a secondary party. For instance, where the manager of an incorporated Marriage Advisory Bureau, negotiates a marriage which he knows to be bigamous.[48] However, it is not inconceivable that a company should be convicted for an offence involving personal violence.[49]

The object of punishment in criminal law is to deter would-be criminals. Punishment of a company may deter the directors from pursuing a course that is contrary to criminal law. The names of the officials, if tried individually will mean nothing to the public. Only the conviction of the corporation itself will serve to warn the public of the dangers posed by the company, for example, by operating buses with faulty brakes or selling contaminated foods. The corporation may not go to prison, if found guilty, but its reputation will suffer. This seems to be the rationale behind convicting corporations for offences committed by their officers.

has been much criticised to the extent of being called a calamitous decision.[5]

The privileges of incorporation and limited liability were originally granted in order to enable a group of capitalists to embark upon risky advantures without shouldering the burden of personal liability. After Solomon's case, any group of traders or even sole traders prefer to run their businesses in the form of a limited company even where no particular risks are involved. Consequently the partnership which ought to be the usual type of business association has been almost completely displaced by the private company. The result of this is that businessmen with a nominal capital rash to form companies only to wind up in bankruptcy after a short time.[6] Solomon's case also gave legitemacy to one-man companies, so that it became possible for a sole trader to incorporate his small business into a company which is distinct from himself. This metaphysical separation between a man in his individual capacity and his capacity as a one-man company can be used to further fraud.[7] It is true that when any fraud is detected in dealings of a company its veil of incorporation is lifted. The writer feels that the veil should be lifted more often and more readily for the benefit of small creditors. The creditors will be better protected if the law were to hold the controlling shareholder(s) in a company liable for the company's debts. Alternatively a company should be treated as the agent of the controlling shareholders.[8] To reduce high mortality in companies, incorporation should be made more difficult and more expensive. The law should prescribe a minimum capital as a prerequisite to the formation of a company. To recompense small businessmen who will not be able to form companies, partnership especially the limited partnership should be encouraged.

The doctrine of ultra vires is said to have been developed for the purpose of protecting the members and creditors of a company in the sense that it ensured that the Subscribed Capital would be mainted and applied for the company's stated objects. This doctrine, however, has been debilitated almost to the point of extinction. These days a company may besides its stated objects, carry on any other business which in the opinion of the directors might be carried on advantageously.[9] Consequently, reliance can no longer be placed upon an objective inspection of the memorandum of association, as the directors may embark upon a new venture that has no apparent connection with the main business of a company. To restore the protection deprived the creditors and shareholders by the Bell Houses case, the directors should be held personally liable for the liabilities they incur due to misjudgement or negligence.

Another hardship caused to a third party dealing with a company is the fact that he is expected to have knowledge of the company's financial status. By inspecting a company's public documents he is expected to know

what assets of a company, are charged. But such an inspection will not necessarily reveal the amount of overdraft secured by way of floating charges. Furthermore not everyone who deals with a company appreciates the legal consequences of a company whose documents he has not looked at. Others do not even know that such documents exist. The experienced businessman can take care of himself, but the littleman, whom the law should particularly protect, rarely has any idea of the risks he runs when he grants credit to a company with a high-sounding name, impressive nominal capital and with assets mortgaged to the hilt.[10] For the benefit of the unsecured creditor and in exchange for limited liability a private company should be compelled to publicise its financial status.

The doctrine of constructive notice is unfair especially to small businessmen in Kenya and elsewhere, most of whom are illiterate and quite ignorant of the law regulating transactions with companies. The doctrine has been abolished in England, so why can it not be abolished here?

In regard to corporate liability in torts and crime there should be no difficulty at all. If a court is prepared to hold, quite tenaciously, that a corporation is a person, why should it find difficulties in holding that person liable in tort and crime? The writer advocates the American approach to the problem of tortions and criminal liability of corporation, whereby on grounds of public policy a company is held liable for the criminal acts of its, officers.[10] Directors of a company are usually financially responsible persons, so the law will not cause any hardship by asking them to pay fines. imposed on a company will eventually have to be borne by the shareholders so punishing a company is tantamount to punishing its members. To discourage directors from financial misconduct they should be invariably held liable where they incur an authorised liabilities.

It is felt that company law is too complex and inconsistent. One Court in Uganda holds that a company has no racial attributes,[12] while another court in England holds that a company is a foreign alien.[13] It is, therefore, difficult to predict the outcome of a judgement, as regards the racial attributes of a corporation: For instance if the Ministry of Commerce issued quit notices to a number of Asians who then incorporated themselves and contended that they were in law distinct from their corporations and therefore the quit notices are invalid against the corporations. If the doctrine of corporate entity were applied in its original sense the Asians would get away with it. In fact may be an English judge of the old school sitting in the High Court of Kenya would give judgement in favour of the separation. For this reason, Company law should be made more comprehensible and more consistent. For this purpose it is suggested that a commission be appointed to study the present company law with a view to making recommendations for probable changes in that area of the law so that it can meet the expectations of both lawyers and the common man.

INTRODUCTION : FOOT NOTES

1. (1897) A.C. 22, H.L.
2. See the Main body of this dissertation
3. Companies Act, Cap. 486, S 16 Laws of Kenya
4. Except that a company is subject to the doctrine of Ultra vires whereas a natural person is not. Secondly, in the course of winding up a company is required to follow certain procedures
5. This contention is disposed of in cap. 3
6. Bolton V. Graham (1957) 1 Q.B. 157
7. Salomon V. Salomon (1897) A.C. 22, H.L.
8. Lee V. Lees Air Farming Ltd. (1961) A.C. 12

CHAPTER I : FOOT NOTES

1. Cap. 486, Laws of Kenya.
2. Section 2.
3. [a] Frank Evans - "What is a Company?" (1910) 26 L.Q.R. 261.
3. [b] Supra
4. Section 389
5. Fort Hall Bakery V. Wangoe (1959) E.A. 474.
6. Cap. 29, 57, Laws of Kenya.
7. Mohammed V. Hussein (1950) E.A.C.A.I.
8. Cap. 30, Laws of Kenya.

CHAPTER II : FOOTNOTES

1. Section 15, Companies Act
2. Section 16 (1)
3. Hornby: "An Introduction to Company Law at p. 16
4. Supra
5. At page 30
6. Lord Herschell in Salomon V. Salomon
7. Laws of England, Vol. 8 at p. 302
8. (1888) 40 Ch.D., 395
9. Gower: Principles of Modern Company Law, at p. 70
10. Macaura V. Northern Assurance Co. (1925) A.C. 619
11. Section 7 (1) (g), Landlord and Tenant Act, cap. 301
12. Tunstall V. Steigman (1962) 2 Q.B. 593
13. Gower: p. 71
14. Professor Kahn-Freund, (1944) 7 M.L.R. 54
15. The Commissioner of Income Tax V. The Golf Club (1954) E.A.T.C.
16. Section 75, Companies Act
17. (1964) 1 W.L.R. 1101
18. Cf. Section 219 (d) Cap. 486

CHAPTER III : FOOT NOTES

1. Ashbury Railway Carriage and Iron Co. V. Riche (1875) L.R. H.L. 653
2. Ranger V. G.W. Railway (1834) 5 H.L.C. 72 at p. 86
3. Kelner V. Baxter (1867) L.R. 2 C.P. 174
4. Newborne V. Sensolid Ltd (1954) 1 Q.B. 45
5. See No. 1 above
6. Palmer's Company Law (21st. ed.) p. 83
7. I.D. Campbell Contracts with Companies (1959) 75
8. (1836) 119 E.R. 886
9. Campbell, Supra at P. 482
10. Ibid.
11. County of Gloucester Bank V. Rudry Merthyr Colliery Company (1895) 1 Ch. 629, at 633 - Lord Halsbury.
12. Campbell supra p. 471
13. Smith V. Hull Glass Co. (1849) 137 E.R. 670 at 673 Wilde C.T.
14. Campbell supra p. 480
15. Salmond on the Law of Tort (13th ed.) p. 70
16. Ranger V. G. W. Ry, supra
17. (1904) A.C. 423
18. Emphasis mine
19. (1915) A.C. 705
20. (1957) 1 Q.B. 159
21. (1924-1926) 2 Cambridge Law journal, P. 350
22. (a) (1867) L.R. 2 Q.B. 534 (b) Blackburn J. at p. 540
23. (1924-1926) 2 Cambridge Law journal p. 180
24. Salt Lake City V. Hollister 118 U.S. 256
25. Ashbury's case, supra
26. See No. 23 supra
27. Warren, ibid.
28. Kenny Outlines of Criminal Law (15th ed.) p. 73
29. Mousell V. London North Western Railway (1917) 2 K.B. 836
30. R V. Stephens (1886) L.R. 1 Q.B. 702
31. R V. Holbrook (1878) 4 Q.B.D. 42
32. Kenny supra, No. 28
33. Section 33 of which provides that a corporation may, through a representative, enter a plea of guilty or not guilty.
34. Law of Tort (3rd ed.) p. 105-106
35. R V. Great North of England Railway Co. (1846) 9 Q.B. 315
36. Griffiths V. Studebakers, Ltd. (1924) 1 K.B. 102
37. (1842) 3 Q.B. 223
38. See no. 35, above
39. Smith and Hogan: Criminal Law (2nd ed.) p. 106

CHAPTER III : FOOT NOTES CONTINUED

40. (1944) K.B. 146

41. (1944) K.B. 551

42. Stable J. at p. 559

43. (1944) 2 All E.R. 515

44. (1946) 62 L.Q.R. 358

45. See No. 20 supra

46. (1966) Crim. L.R. 396

47. The same trend has been adpoted in Kenya, so that here too a company can be convicted of conspiracy to defraud: Ref. Daily Nation, 28th May, 1976

48. Smith and Hogan, p. 107

49. R V. L.C.R. Haulage

CONCLUSION : FOOT NOTES

1. Hart H.L.A. – in 70 L.Q.R. mentions a third school of thought, the concessionist, but he does not indicate what its belief or doctrine is.
2. Smith V. Andershon (1880) 15 ch. 247 at p. 273
3. (1897) A.C. 22
4. See, Macaura V. Northern Assurance Co. (1925) A.C. 619, and Tunstall V. Steigman (1962) 2 Q.B. 593
5. D. Kahn-Freund: (1944) 7 M.L.R. 59
6. This assertion is not supported by any evidence, but no reasonable man would expect a company with a capital of fifty cents to last long.
7. Gilford Motor Co. V. Horne (1933) ch. 270, Jones V. Lipman (1962 1 W.L.R.83
8. Gilford V. Horne, Ibid
9. Bell Houses Ltd. V. City Wall Properties Ltd.(1966) 2 Q.B. 656
10. Gower, Modern Company Law (3rd ed.) P. 70
11. Salt Lake City V. Hollister, 118 U.S. 256
12. Katate V. Nyakatutura (1956) 7 U.L.R. 47
13. Continental Tyre and Rubber Co. V. Daimler (1916) 2 A.C. 307

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