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Criminal Liability of Corporations

The criminal liability of corporations is one of the most interesting and sophisticated issues in the israelian criminal law as well as in the comparative law : the common law and the continental one.

The importance of this issue has raised especially after the industrial revolution which results in increased incorporatements, and thus in reinforcing the role corporations has played in the economic and social life as well. The contributions of these corporations in breaching the safety and health standards, according to specific statutes and acts was the main cause for death occurences and injuries to thousand of people either empolees or consumers and providers, mainly in the serious disasters in the history.

These serious harms caused by corporations prompted the law to seek for techniques and methods by which can the law sign a message of denial and blaming to this phenomenon and to deter these involved corporations from committing the offences.

The issue of imposing criminal responsibility on corporations has aroused a serious debate and a conceptual difficulty since the law intends to impose responsibility on such a "legal personality" which is not human, lacks hands to act, and a brain to create the mens rea required to constitute an offence. Thus the challenge standing in front of the criminal law is to explain the legitimacy in imposing such responsibility on such an unhuman body.

Consequently, while law methods based on the classic continental law such as the german, austrian, Italian, Spanish don`t admit this term- the criminal liability of corporations, other methods based on the common law such as English, American, Canadian, Australian and Israelian law admit the criminal responsibility of corporations.

So, this research targets to examine both the dogmatic and the pragmatic aspects of the issue. The dogmatic aspect is intended to examine the justifications and rationals standing behind the concept of imposing criminal liability on corporation besides the criminal liability of the direct perpetrator: the employee or the organ that commits the specific offence, mainly the focus will be on the prerequisite question whether the criminal liability of corporation is compatible with

the principles and components of the offence : behaviour, fault, deterrence, retribution and the sanctions.

The pragmatic aspect aims to examine the ways by which can the law impose criminal liability on corporations. In this field, there are 3 recognized models in the different law models. First, the vicarious liability which is adopted well in the American law and the Hollandian law. According to the model, corporation will be liable for an offence committed by an employee notwithstanding his status in the corporation, during his employment and in the benefit of the corporation. Secondly, the organization theory adopted well in the English, Canadian, Newzelandian , Israelian and Australian (until 1995) law. According to the model, corporation will be liable only if the offence was committed by the organ or chief officer in the corporation. Thirdly, The organizational fault model adopted well in the Australian law since 1995. According to the model, corporation will be liable for its self fault, namely if the corporate ethos or policy encourage the committing of the offence or at least don't attempt to prevent it.

The research aims to analyse each model, attempting to uncover the defects and the conceptual or the practical difficulties in each model, in order to construct a new desirable model which will compatible optimally with the principles of the criminal law, as have been mentioned.