

Where's WALL-E?

Corporate Fraud in the Digital Age

Professor Elise Bant
UWA Law School

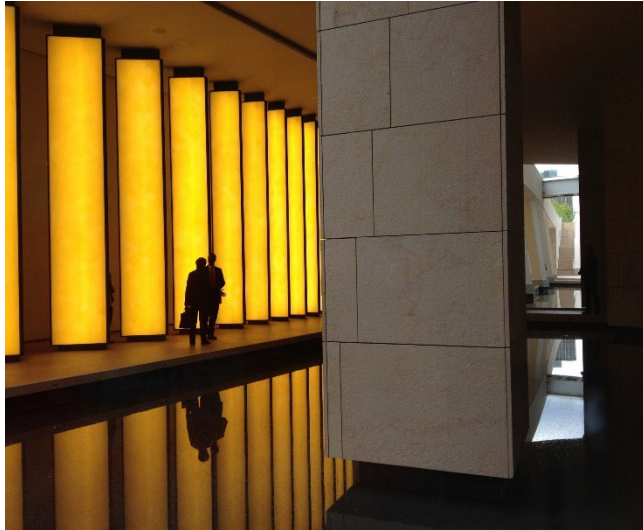
Individualistic attribution rules

Corporations have no natural brain, but minds matter, so...

- Cf Vicarious liability
- ‘directing mind and will’
- *Meridian*
- More expansive statutory rules (eg Australian ‘Trade Practices Act’ model)



The modern corporate context



- Massive, multinational corporations with devolved structures
- Information silos
- The human actors through which a corporation acts change, leave, get promoted, die...
- 'Group think'
- Corporations are not the sum of their parts!

The traditional emphasis on the human face of corporations has made proving fraud against corporations hugely complex, expensive and often impossible (FSRC, Crown Casino Royal Commissions, Law Commission inquiries in Aust and Eng)

Where's Wall-E?

Limited individual involvement so the narrative becomes...

- 'System errors'
- The 'black box'
- The computer/robot/AI made me do it!



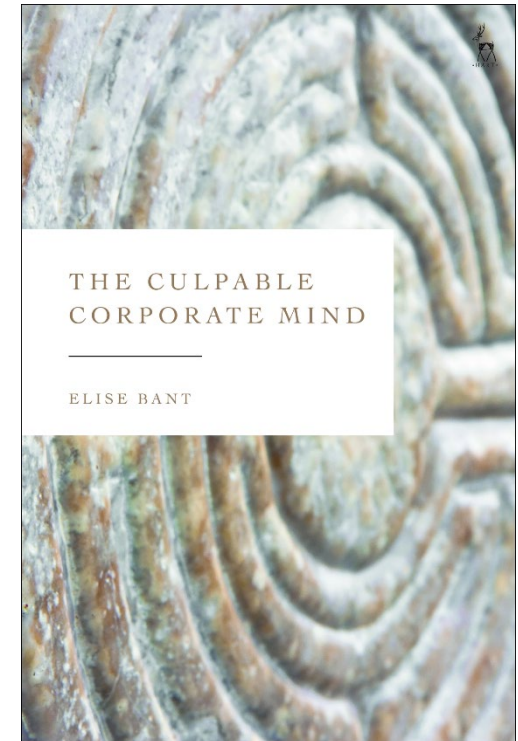
https://stock.adobe.com/au/Library/urn:aaid:sc:AP:edbb9800-7584-478a-ac61-89e5e792f2a8?asset_id=459962128

Systems Intentionality

‘Corporations manifest their state of mind through their systems of conduct, policies and practices.’

- A ‘system of conduct’ is a *plan of procedure*, or internal *method*
- A ‘practice’ may develop organically, commonly involving habitual or ‘customary’ patterns of behaviour
- A ‘policy’ operates at a higher level of generality, manifesting overarching purposes, beliefs and values. Closest to Corporate Culture.

<https://unravellingcorporatefraud.com/>



<https://www.bloomsbury.com/au/culpable-corporate-mind-9781509952380/>

Systems Intentionality

‘Corporations manifest their state of mind through their systems of conduct, policies and practices.’

- A corporation’s system of conduct both *reveals* the corporate intention and *embodies* or *instantiates* that intention. I.e. corporations think through their systems – and so, assessment and characterisation of the system enables us to know the corporate state of mind.
- Systems are inherently purposive: they co-ordinate and connect steps and processes *to some end*
- Knowledge of certain matters will be implicit in the system: eg a predatory business model that will only be profitable if a certain class of vulnerable consumers exists and is successfully exploited (*ASIC v National Exchange*).

<https://unravellingcorporatefraud.com/>



Example 1: pain(ful) relief

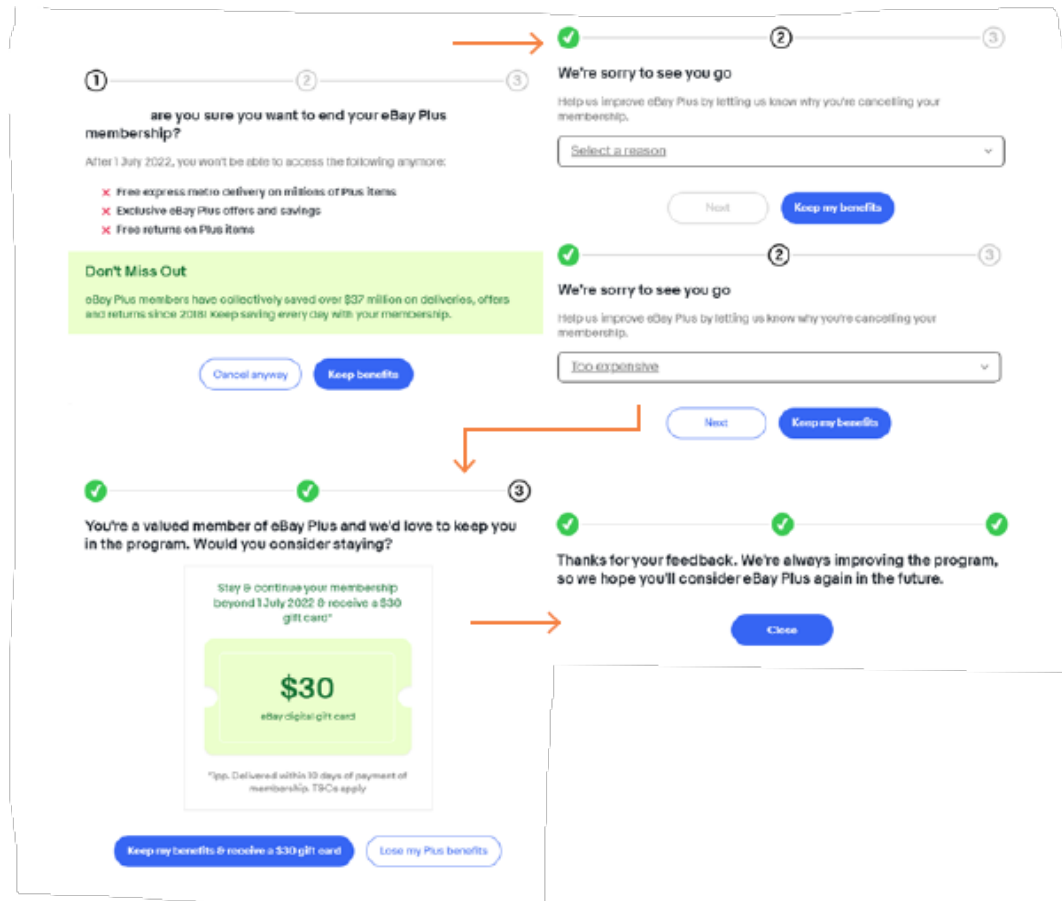
- Branding strategies
- Identical active components, very different prices...
- Long-running campaigns
- Shonky award and other complaints

Innocent error,
carelessness... or just plain
deceptive?



Example 2: Subscription (mal)practices

- So easy to sign up!
 - Not so easy to cease...
- How much more do we need to know?



Example 3: Fees for no services

- Life insurance fees and fees for financial advice are charged through automated fee deduction systems
- The default settings are to deduct fees on an ongoing basis ('choice architecture')
- Given the nature of the products (life insurance and financial advice), it is inevitable that the conditions justifying fees will change
- There are no, or no functioning, adjustment, monitoring or corrective mechanisms.

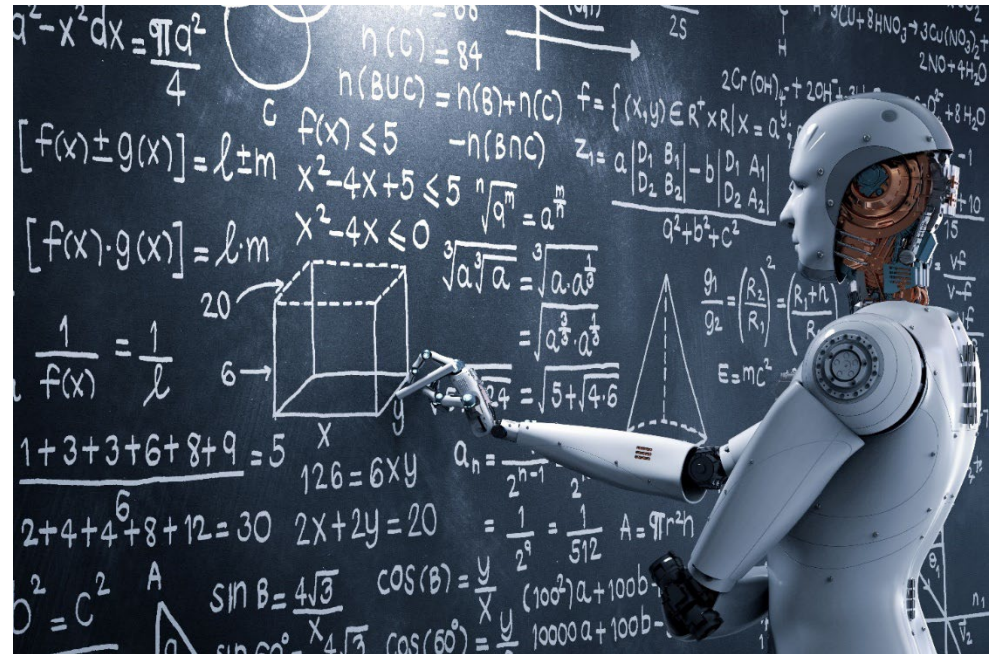
'Systems error' or deliberate and dishonest conduct?

Artificial intelligence systems

Machine learning systems

- Designing other systems
- Harvesting and experimenting at scale
- Unpredictable?
- Defy human analysis?
- 'The robot did it!'

But deploying an uncontrolled, unaudited and unresponsive system is itself a choice...



https://stock.adobe.com/au/Library/um:aaid:sc:AP:edbb9800-7584-478a-ac61-89e5e792f2a8?asset_id=166473553