

Aggregation in Corporate Attribution Law

Corporate Attribution Law

- **How can a corporation**, being an artificial legal creation that has no natural mind, **be said to have acted**, for example, **intentionally, knowingly, dishonestly or recklessly?**
- Corporate attribution law is the legal framework by which corporations are attributed these mental states, and the associated liability

Attribution Methods

Traditional methods

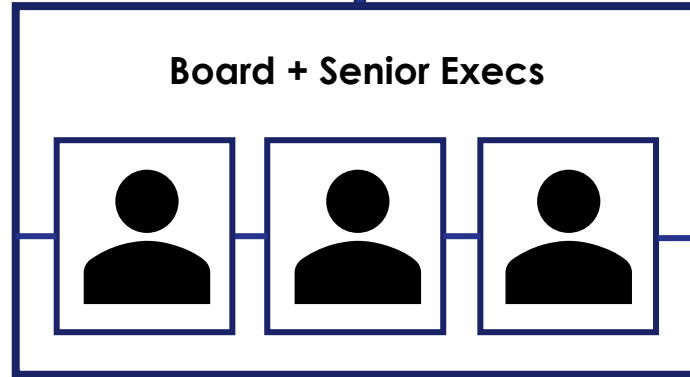
- Identification theory
 - Aus + UK
- Vicarious liability
 - Respondeat superior – US
 - TPA model – Aus
- Aggregation

Newer methods

- Organisational methods
 - Aus corporate culture provisions
 - Systems intentionality
- Strict liability approaches
 - Failure to prevent model

Corporation X

Corporate Mind State



Identification Theory

Attribution of any mental state wholly possessed by an individual belonging to the 'directing mind and will'

Department A



Department B



Department C



Corporation X

Corporate Mind State

Board + Senior Execs

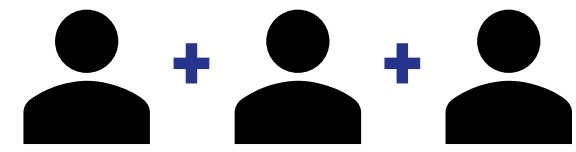


Department B



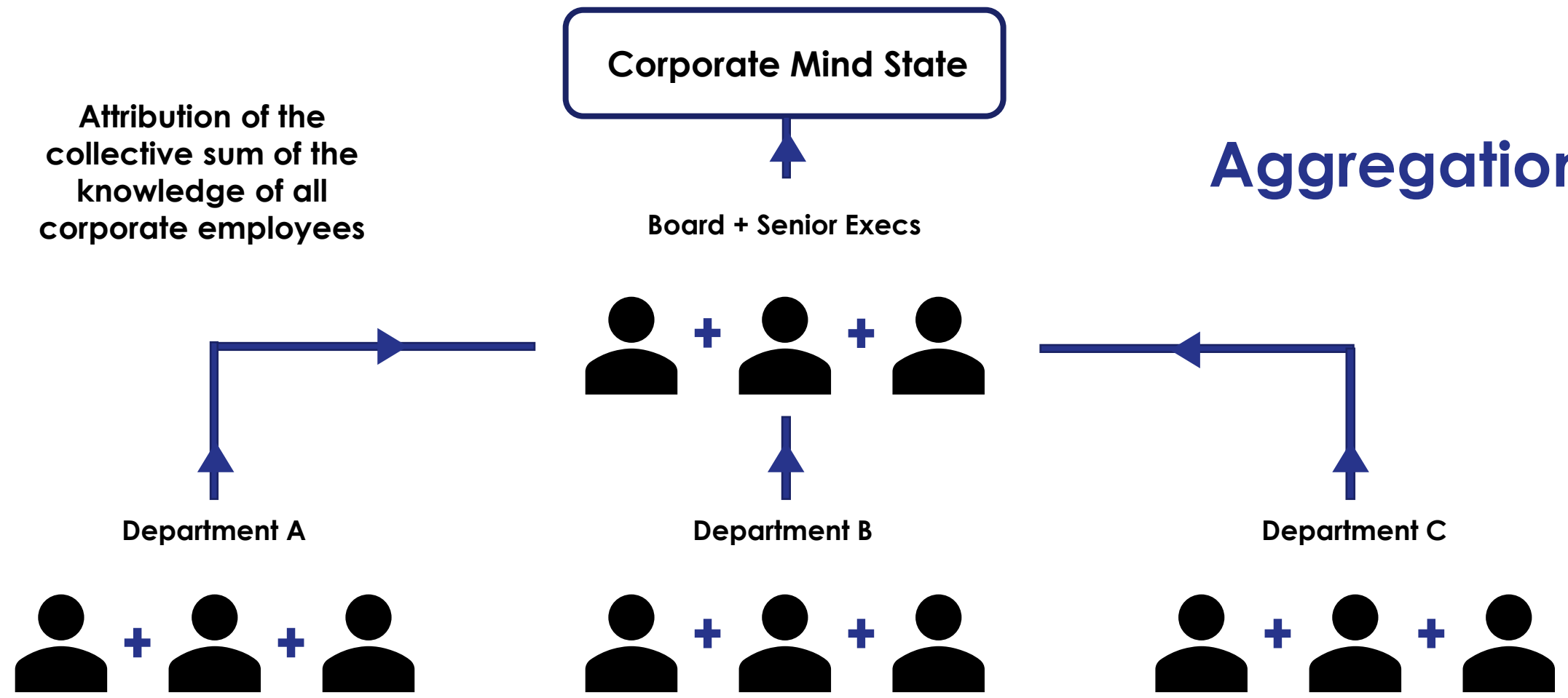
Aggregation

Department C



Attribution of the collective sum of the knowledge of all corporate employees

Department A



Corporation X

Corporate Mind State

Systems Intentionality

Corporations are attributed with the mind states manifested from their systems of conduct

Board + Senior Execs



Department A

Department B

Department C



Attribution Methods

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Research Question

What are the **reasons** for the use of **aggregation**, and does **systems intentionality** address these **reasons** on a **more principled basis**?

Research Methodology

- Analysing cases of aggregation from three different jurisdictions:
 - US
 - UK
 - Australia
- Attempting to discern reasons for the use of aggregation from a practical, functionalist perspective
- Comparing aggregation with systems intentionality, determining whether systems intentionality addresses these reasons on a more principled basis

Thesis

- A **significant reason** for the use of **aggregation** is the **ability** of aggregation to **overcome** obstacles to corporate liability posed by **information barriers**
- **Systems intentionality responds** to this issue on a **more principled basis**. It is more transparent in its operation and provides a stronger legal justification for corporate liability in circumstances where a company is structured to restrict the flow of information

Example

United States v Bank of New England NA 821 F 2d 844 (1st Cir, 1987)

- Major bank charged with 31 violations of **willfully** failing to file reports of suspicious currency transactions
- Bank argued that no one individual employee had full knowledge of the transactions and full knowledge of the reporting requirements. Therefore, under the respondeat superior attribution method, the bank cannot be attributed with willfulness

Bank of New England

Wilful non-reporting?

No single individual with wholly culpable state of mind

Senior Managers



Knowledge of reporting requirements



Information barrier

Tellers



Knowledge of transactions

Bank of New England

At 856:

'Corporations compartmentalise knowledge, subdividing the elements of specific duties and operations into smaller components. The **aggregate** of those components **constitutes** the **corporation's knowledge** of a particular operation ... Since the Bank had the compartmentalised structure common to all large corporations, the Court's **collective knowledge instruction** was **not only proper but necessary**'.

Bank of New England

Aggregation

Corporation attributed with the aggregated knowledge of all employees

Wilful non-reporting

Senior Managers



Knowledge of reporting requirements



Knowledge of transactions



Information barrier

Tellers



Systems Intentionality

Information barrier is an inherently purposive system.

It manifests an intention to prevent any one individual from acquiring full knowledge of reportable transactions.

Bank of New England

Wilful non-reporting

