

I. Status of business entities under criminal law:

1. **Does your penal code (or judicial interpretations thereof) provide that business entities may be prosecuted criminally for violations of such code?**

Canada	Yes in most cases
France	Yes but not for all types of entities and not for all criminal offenses.
Norway	Yes
U.K.	Yes for violations of common law (only corporations and not for all offenses) and statutory offences (partnerships and unincorporated associations may also be liable)
U.S.	Yes

2. **What are the standards applied in your jurisdiction for attributing liability to a business entity for the actions of individual servants? For example:**

- a. **What must one demonstrate in order to convince the court that the actions of the servants of the business entity may be attributed to the business entity to establish the guilt of the business?**

Canada	Identity Doctrine/Directing Mind
France	Representative of legal person (business entity) must act "on the account of" the legal person
Norway	Company liability arises out of the acts of individuals, as "when a person who has acted on behalf of a company contravenes a penal provision."
U.K.	A company can be held liable for a criminal act if the act and necessary mental element can be found in one of its employees or directors and attributed to the company. (referred to as the alter ego doctrine. As for mens rea (intent), the conventional view is that a company will have imputed to it the acts and state of mind of those of its directors and managers who represent its "directing mind and will."
U.S.	A corporation can be held criminally liable for the acts, omissions, or failures of an agent acting within the scope of his employment. Because corporations are incorporeal legal

	<p>entities, courts look to employees of the corporation as a means of imputing intent, or mens rea, as well as the guilty act, or actus reus, to the corporation.</p> <p>Courts use a three-prong inquiry to determine whether a corporation will be held vicariously liable for the acts of its employees. First, the individual must be acting within the scope and nature of his employment. Second, the individual must be acting, at least in part, to benefit the corporation. Finally, the employee's act and intent must be imputed to the corporation</p>
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3. Under your criminal code (penal law), what is the legal standard for convicting someone of aiding and abetting the commission of a crime by another (complicity)? What is the legal standard for convicting someone of plotting with another to commit a crime (criminal conspiracy)?

Canada:

Sections 4(1.1) and 6(1.1) of the CAHWCA state: “Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.” Under these sections, the punishment is listed in subsection (2) as imprisonment for life, if an intentional killing forms the basis of the offence, or liability to imprisonment for life in all other cases. Additionally, the Criminal Code provides that “every one is a party to an offence who ... (b) does or omits to do anything for the purpose of aiding any person to commit it; or (c) abets any person in committing.” See s-s. 21(1). Essentially, abetting means “to encourage or set on,” and an abettor as “an instigator or setter on, one who promotes or procures a crime to be committed.”

France:

Prosecution of conspiracy presupposes the existence of a principal crime, according to the legal principle of “assumption of criminality.”

Articles 121-6 and 121-7 of the Criminal Code provide for the suppression of conspiracy.

Article 121-6 states that “the accomplice to the offense, in the meaning of article 121-7, is punishable as a perpetrator.”

Accordingly, the accomplice incurs the same penalties, as if he had himself been the principal perpetrator of the crime. Article 121-7 distinguishes, in its two paragraphs, complicity by aiding or abetting and complicity by investigation. It thus states that:

The accomplice to a felony or misdemeanor is the person who, by aiding or abetting, facilitates its preparation or commission.

Any person who, by means of a gift, promise, threat, order or an abuse of authority or powers, provokes the commission of an offense or gives instructions to commit it, is also an accomplice.

It follows from this article that in order to engage a person's accomplice liability, that person must have participated in the reprehensible act of the principal perpetrator; her participation must have taken one of the aforementioned material forms and must have been intentional in character. The theory of assumed criminality requires that the participation of an accomplice must be linked to the principal punishable act, i.e. the act designated a felony or misdemeanor by law.

Norway:

Each penal provision in the Norwegian criminal code specifies if it is criminal to aid and abet. Also, when the attempt is criminal, then participating in the attempt is also criminal (§ 49 above).

U.K.:

The law governing complicity in criminal offences arises from the common law but has been codified in section 8 of the Accessories and Abettors Act 1861 (*AAA*) (as amended by section 65(4) of the Criminal Law Act 1977 and Schedule 12), which states:

Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.

Since criminal liability as a secondary party arises from the common law, *mens rea* is required for a successful prosecution even when it is not required for the principal offender (for example, in the case of offences of strict liability).

The secondary party must have intended to do the acts that he knew would assist the commission of the crime. He must intend the crime to take place or be indifferent to its commission. He must also know of all the essential matters that make the act a crime but need not know that the act would amount to a crime.

In England and Wales, conspiracy is an offence both at common law and under Statute.

Section 1(1) of the Criminal Law Act 1977 provides

Subject to the following provisions of the Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either –

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.

U.S.:

The U.S. criminal code makes aiding and abetting an integral part of a federal crime:

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Section 2 applies to the entire criminal code. Thus, unless there is an express statutory provision to the contrary, a person may be convicted of aiding and abetting any act made criminal under the code.

The elements of aiding and abetting are, generally: (1) guilty knowledge on the part of the accused (mens rea); (2) the commission of an offense by someone; and (3) the defendant assisted or participated in the commission of the offense (actus reas).

The U.S. criminal code makes conspiracy a separate federal offense:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

There are four elements of criminal conspiracy, each of which the prosecution must prove beyond a reasonable doubt. Circumstantial evidence alone is a sufficient basis for a conspiracy conviction. A conspiracy exists where there is: (1) an agreement between at least two parties, (2) to achieve an illegal goal, (3) where the parties possess knowledge of the conspiracy and with actual participation in the conspiracy, and (4) where at least one conspirator committed an overt act in furtherance of the conspiracy.

4. Are there any other special elements not required in the conviction of a natural person that must be present when the defendant in a criminal proceeding is a business entity?

Canada	No
France	N/A
Norway	No
U.K.	No but if proceedings are to be brought against a company the controlling mind of that company needs to be identified, as only that person's acts can be attributed to the company.
U.S.	- Naming the proper corporate entity. - Piercing the corporate veil.

	<ul style="list-style-type: none"> - Imputing actions of servants to the corporation. - Immunity of State-Owned Entities.
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II. Status of International Law/International Humanitarian Law in your Country's Legal Framework:

5. May an individual be prosecuted for violations of international law in the courts of your country?

Canada	<p>Certain international war crimes and crimes against humanity have been articulated as Canadian crimes in the <i>Crimes Against Humanity and War Crimes Act</i>, S.C. 2000, c. 24. The CAHWCA provides for the prosecution of genocide, crimes against humanity, war crimes, breach of responsibility by a military commander or a superior (usually a civilian superior), offences against the administration of justice of the International Criminal Court and possession or laundering of proceeds derived from these crimes. The CAHWCA implements domestically the Rome Statute of the International Criminal Court</p>
France	<p>The French Legislature has inserted in the new Criminal Code a whole title exclusively devoted to crimes against humanity. There are now not one but several crimes against humanity, amongst which the crime of genocide occupies the first chapter alone, followed by the other crimes in the following chapter.</p> <p>Within the first title, the Legislature has enumerated 3 types of crime: genocide, crimes against humanity (<i>stricto sensu</i>), which originate for their part from article 6-c of the Statute of the IMT: and aggravated war crimes.</p> <p>Certain international crimes also have corollaries in French domestic law (e.g. forced labor is the equivalent of illegal confinement)</p>
Norway	<p>Norwegian domestic law integrates specific bodies of international law but imposes the condition that there must be a penal provision in the domestic criminal law that covers the</p>

	<p>violation.</p> <p>Norway ratified the Rome Statute of the International Criminal Court (ICC) statute the 16 of February 2000, and it entered into force July 1, 2002. The ICC is complementary to domestic criminal jurisdictions. Thus, the Norwegian courts have precedence to prosecute crimes that are specified in the statute. These crimes are genocide, crimes against humanity, war crimes and the crime of aggression.</p> <p>At present, Norway has integrated certain international crimes to its penal code, among them slavery and genocide. In one case, slavery, this was done via legislation. In the case of genocide, this was done via a Justice Department ruling that indicated genocide could be considered under the penal provision for homicide.</p> <p>In Norway, steps are underway to incorporate into the penal code the various provisions of the laws of genocide, crimes against humanity and war crimes and aggression found in the ICC statute.</p> <p>Other international crimes (e.g. torture) could be prosecuted using Norwegian penal law.</p>
U.K.	<p>Yes, in accordance with those Conventions that so require prosecution to which the United Kingdom has acceded, a natural person may be prosecuted for genocide, war crimes, crimes against humanity, torture, enslavement and forced labor (International Law Offences). Genocide and crimes against humanity are triable in the U.K. pursuant to section 51(1) of the International Criminal Court Act (ICCA) of 2001 for acts committed either in the U.K. or by U.K. nationals abroad. The Act, which gives effect to the SICCC, which entered into force 1 July 2002.</p>
U.S	<p>Yes if the international law in question has been incorporated directly into U.S. criminal law through Congressional legislation. U.S. courts have not subscribed to the doctrine of universal jurisdiction, and thus legislation is needed in order for a violation of international law to be prosecuted in a U.S. court.</p>

	The U.S. Congress has “nationalized international law” by adopting statutes covering genocide, war crimes, torture, piracy, slavery, trafficking in women and children — all activities proscribed under international agreements.
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6. May a business entity be prosecuted for violations of international law in the courts of your country?

Canada	Yes, as long as those crimes have been implemented into domestic law, as Canada is a dualist system. The international crimes of genocide, crimes against humanity, war crimes and breach of responsibility of a military commander or superior (usually called superior or command responsibility in international law) have been incorporated into Canadian law through the CAHWCA. However, companies are not explicitly included or excluded from prosecution where international crimes may be prosecuted in Canadian law.
France	Yes. The principle of criminal liability of legal persons is contained in the new Criminal Code in article 121-2. As for the crime in question, article 121-2 indicates that the legal person will be liable in the cases provided for by the Law or by regulations, when the Legislature has enshrined this liability in the theory of crimes against humanity in article 213-3, which provides that: <i>Legal persons may incur criminal liability for crimes against humanity pursuant to the conditions set out under article 121-2.</i>
Norway	In principle, Yes. There is no legal obstacle to the prosecution of business entities under international law provisions that correspond to domestic penal code provisions. To be actionable in Norwegian courts, the international law provisions must be integrated domestic criminal law in the relevant Norwegian penal provisions.

U.K.	<p>as a legal entity can be charged with such offences domestically, they can also be charged in respect of those offences which statute has made punishable irrespective of where the offence was committed (for example, corruption under the Terrorism Act 2002).</p> <p>Unless the contrary intention appears in a U.K. statute, the word “person” includes a “body of persons corporate or unincorporated.” Therefore, business entities (whether a company, unincorporated association or partnership) can be prosecuted in England and Wales for International Law offences in as much as individuals can under the relevant statutes (as set out in our answer to question five above).</p>
U.S.	Yes. See discussion in Question 5.

III. Alternative Mechanisms: Civil Law/Tort:

7. Are there any bases in your country's tort law (civil law) for suing individuals and/or business entities for violations of international law?

Canada	Yes. Although there is no ATCA equivalent but perhaps suit for tort
France	Yes. In French law, a civil action can be brought jointly with a penal action, before a criminal court.
Norway	Yes. There is a theoretical option to get to violators by suing them for damages for the harm the violation has resulted in.— The Norwegian code of compensation for damage sets forth the options for this.
U.K.	Most breaches of international human rights law would however amount to tortious conduct within our existing legal paradigms. For example, while no distinct tort of torture exists, any claim would fall within the pre-existing tort of trespass to the person (assault & battery) and would be plainly actionable.
U.S.	Although U.S. federal courts do not automatically apply the doctrine of universal jurisdiction, the 1980 decision by the Second Circuit in <i>Filartiga</i> launched the federal courts into an expansive interpretation of the federal Alien Tort Claims Act so as to allow numerous tort claims brought in federal court for a breach of the “law of nations.”

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8. What types of causes of action might be asserted against a business entity with respect to actions committed outside of your country but which involve a business entity that is domiciled in your jurisdiction?

Canada	Yes, any of the civil causes of action
France	France has the right, if certain conditions occur, to prosecute and judge persons, who commit crimes outside of French territory. French law can thus apply to prosecute crimes committed outside her territory when the perpetrator or victim of the crimes are French citizens; Also crimes detrimental to French interests.
Norway	If a business entity domiciled in Norway is involved in actions that are committed outside the country it is possible to bring civil or criminal actions against this business entity (on the basis of the Norwegian domicile of the entity). It is also required according to criminal law that the action also has to be punishable according to the law of the country in which it is committed.
U.K.	There is no substantive difficulty in pursuing a claim for a tort committed overseas but there are a multitude of potential procedural difficulties. The “long-arm,” or exorbitant, jurisdiction of the English courts is exceptionally wide. The bases of jurisdiction are set out in the Rules of the Supreme Court. The majority of cases in which foreign entities have been sued will have involved some contractual nexus. Tortious liability can be asserted under certain circumstances, including economic harm, conspiracy, fraud, and even defamation.
U.S.	The two U.S. statutes that may have the most significant potential for interdicting the illicit exploitation of resources abroad are: (1) the National Stolen Properties Act (NSPA); and (2) the Racketeering Influenced Corrupt Organizations Act (RICO). California courts allowed claims for forced labor and personal injuries brought by a Korean national against a cement company that had

	<p>employed him as a slave laborer. A Louisiana court allowed claims by citizens of Indonesia that they were injured by security forces employed by a subsidiary of a U.S. corporation (although the court, in a later proceeding, dismissed the claims for insufficient pleadings). The California Superior Court for Los Angeles County is currently trying a case brought by Burmese villagers involving claims for forced labor, rape and murder, essentially the same claims involved in the federal <i>Unocal</i> case currently pending before the federal Court of Appeals for the Ninth Circuit,</p>
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IV. Jurisdiction:

9. On what bases do the courts of your country assert jurisdiction over criminal and civil defendants?

<p>Canada</p>	<p>For civil jurisdiction, the court requires a “real and substantial connection” with the subject of the litigation.</p> <p>For criminal jurisdiction, Canadian courts generally may only prosecute those crimes committed within Canadian territory. Second, there are special extraterritorial crimes that may be prosecuted in Canada. <i>See, e.g., Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24.</i> Jurisdiction under the CAHWCA is wide and includes jurisdiction based on both active and passive personality, as well as universal jurisdiction as presently defined under customary international law (i.e. containing a presence requirement).</p>
<p>France</p>	<p>The extraterritorial jurisdiction of France is based on a connection either with the perpetrator of the crime or the victim, either with the events, or based on the concept of universality.</p> <p>French law extends to certain crimes committed outside its territory by reason of a connection to the person concerned, whether perpetrator (active personality jurisdiction) or victim (passive personality jurisdiction) of the crimes. This connection takes effect through the nationality of the person. French</p>

	<p>jurisprudence also allows jurisdiction for a crime committed abroad where the perpetration of a connected or indivisible act occurred in France. Conversely, French law applies when the acts of complicity were committed in France, for a crime committed abroad, if the acts are punished both by French law and foreign law and if the felony or misdemeanor has been established by a decision of a court of final instance of the foreign jurisdiction</p>
Norway	<p>Norwegian criminal law is applicable to acts committed abroad by any Norwegian national or any person domiciled in Norway when the act is a felony also punishable according to the law of the country in which it is committed, and the offender is resident in the realm or is staying therein (§ 12).</p> <p>Civil law: The conclusive question to determine jurisdiction in civil law is where the defendant has her residence or temporary personal presence (§§ 18 and 19). What determines the jurisdiction to sue a business entity is where the board of directors has its seat (§ 21).</p> <p>Foreigners can be sued in Norwegian courts if they run any kind of business activity in Norway (§§ 27 and 28)</p>
U.K.	<p>Under English common law, the fundamental principle of jurisdiction in relation to civil matters is that a defendant who is liable to be served with proceedings. Civil proceedings may be served on a person who is physically present within the jurisdiction, even if only temporarily. Proceedings may also be served outside the jurisdiction with the permission of the court. Such permission will be granted if one of the grounds set out in the Civil Procedure Rules is met. These grounds include, <i>inter alia</i>, domicile, the place of performance of contract, the place where a tort was committed and the location of the property subject of a claim.</p> <p>The criminal jurisdiction of English courts is primarily based upon the location of the accused within the jurisdiction. Criminal enactments are also presumed, in the absence of express contrary intention, to apply only to</p>

	<p>acts committed within the geographical extent of the jurisdiction.</p> <p>There are a number of statutes that impose criminal liability on U.K. and/or non-U.K. nationals who commit particular acts outside the jurisdiction. Jurisdiction over these persons can only be actually exercised where the individual is present or visits the U.K. - otherwise the U.K. government would need to seek that individual's extradition from the State in which he is located.</p> <p>Certain statutes have made the commission of certain acts abroad into crimes, which can be prosecuted in the United Kingdom. In those cases, jurisdiction is confined to U.K. citizens/nationals and U.K. incorporated bodies</p>
<p>U.S.</p>	<p>U.S. courts have personal jurisdiction over a corporation if: (1) the corporation is organized in a jurisdiction; (2) the corporation is doing business in the jurisdiction; (3) the corporation has consented to be sued; or (4) the corporation appears in court to defend the action without specifying that the purpose of the appearance is a special appearance.</p> <p><i>In personam</i> jurisdiction over an individual or a corporation may be "general," i.e. a suit may be brought for any cause of action over which the forum court has subject matter jurisdiction and there is proper venue; or, "specific," i.e. the suit may be brought only with regard to those activities which gave rise to the cause of action.</p> <p>In a criminal matter, if a criminal act is commenced in one state, but the defendant is in another state, the first state may ask the authorities to arrest the defendant and extradite him to the requesting state to stand trial. If the defendant has fled to a foreign country, a treaty of extradition is in effect between the foreign country and the U.S., the U.S. may formally request that the foreign country arrest and extradite the defendant to stand trial in the original court in which the criminal complaint was filed.</p>

10. If plaintiffs wanted to sue a business entity in your jurisdiction, what are some of the jurisdictional and procedural obstacles that they (and their lawyers) might face?

Canada	Example: forum non conveniens; prosecutorial discretion
France	The principal obstacle is posed by the conditions required by article 113-5, which provides that in the case where someone commits an offense in France as an accomplice to a felony or misdemeanor committed abroad, the victims must show proof of a conviction from a court of final instance of the principal perpetrator. Therefore, often victims find it impossible in practice to have the principal perpetrator convicted before the courts of their country.
Norway	The court must be competent in an objectively, local, and functional way. Determining the legal home court, i.e. the local competence of the court, is dependent on two circumstances. When the law does not require a specific legal home court, the defendant can choose another court than the one that the legal action was brought to (§ 36 Civil Suit Act). Sometimes the courts local competence depends on the fact that the defendant has to give its consent (§ 92).
U.K.	<ul style="list-style-type: none"> - Service of process abroad; - Double actionability rule; - Forum non conveniens; - Limitation periods
U.S.	<p><u>Cost.</u> The costs involved in federal court litigation can be prohibitive even when legal services are furnished pro bono.</p> <p><u>U.S. Government and “Act of State” Issues.</u> Even if jurisdiction and venue are proper, a federal court has discretionary authority to dismiss the suit under the act of state doctrine or one of its related doctrines, such as “comity” or “political question”</p> <p><u>Legal Objections.</u> A multinational corporation can be expected to raise every defense or objection to the lawsuit that can be advanced without embarrassing the presenting attorney.</p>

	<p>Among the myriad legal objections raised in previous ATCA cases are: the statute of limitations; lack of standing, insufficient basis for certification of a class (including lack of common injuries or other factual or legal issues and failure of the plaintiffs to represent the class); various formal deficiencies in pleadings; lack of personal jurisdiction (including lack of jurisdiction over a parent corporation when the entity having contacts with the jurisdiction is a subsidiary); lack of subject matter jurisdiction (both statutory and constitutional objections having been presented); improper service of process; sovereign immunity; head of state immunity, forum non conveniens, the act of state doctrine, justiciability (political question), comity, local action, absence of state involvement (in an attempt to defeat an ATCA claim invoking the “law of nations”); absence of state involvement in torture (to meet the TVPA requirement that torture be carried out “under color of law); failure to join an indispensable party (usually a governmental entity which is immune from suit and cannot be joined or a foreign party over which the court has no personal jurisdiction); and failure to exhaust local remedies (under the TVPA.</p>
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11. Do the courts in your country sometimes decline to exercise jurisdiction over matters where the events occurred in another country and/or the majority of witnesses and the bulk of other evidence is outside of your country, thereby making it more convenient for the parties to litigate in the courts of another jurisdiction (sometimes referred to as the doctrine of *forum non conveniens*)?

Canada	Yes
France	No
Norway	In practice, this has occurred only once in the criminal context, when a Norwegian prosecuted declined to prosecute case against Israeli Prime Minister. One of the grounds was that witnesses located in another country
U.K.	Yes
U.S.	Yes

12. Would the doctrine of sovereign immunity be applicable to protect a state-owned enterprise?

Canada	N/A
France	No
Norway	No
U.K.	Possibly
U.S.	Yes