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# ASSESSMENT OF WRONGFUL TRADING AND DIRECTOR LIABILITY IN CORPORATE INSOLVENCY: A LEGAL DISCOURSE

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## ABSTRACT

***Wrongful trading laws, particularly as outlined in Section 214 of the UK Insolvency Act 1986, hold company directors personally liable when they allow a business to continue operating while insolvent. Drawing on theoretical perspectives and empirical findings from the UK and comparative jurisdictions, this paper reveals that while wrongful trading seeks to protect creditors and ensure director accountability, practical enforcement and deterrence remain weak. Policy reforms, including education and resilience-based frameworks, may improve the efficacy of wrongful trading regimes.***

**KEYWORDS: Wrongful Trading, Director Liability, Corporate Insolvency, Legal Discourse**

## INTRODUCTION

Wrongful trading refers to the liability of company directors who allow a business to continue trading when they knew or should have known that insolvency was unavoidable. Introduced by the UK Insolvency Act 1986, this provision aims to address the limitations of fraudulent trading statutes and prevent reckless corporate behavior. Despite its conceptual clarity, wrongful trading is under-enforced, raising concerns about its deterrent effect and practical relevance. [1]. Corporate fraud by its nature can be divided into internal (intra-corporate)—committed by hired employees—and external, which involves deception by counterparties. According to the KPMG report *"Retail Losses. Risk Management"* from 2019, the greatest damage to domestic retailers is caused by internal corporate fraud [10, p. 2]. The heightened risk of its occurrence creates the need to study its characteristics in order to subsequently build an effective system for countering internal corporate fraud, with the aim of ensuring the economic security of retail businesses.

## THE CHARACTERISTICS OF INTERNAL CORPORATE FRAUD MAY INCLUDE:

- The commission of unlawful acts by individuals working for the company: its management, hired employees, or business owners;
- The presence of direct intent, such as the theft of another's property or the unlawful acquisition of rights to it;
- Damage to the company's assets and reputation, resulting in both financial and non-financial losses;
- A selfish motive, involving the pursuit of personal gain through deception or abuse of trust.[2]

## METHODS

This article uses a doctrinal legal research methodology, supplemented by comparative analysis and theoretical perspectives. Primary legislation, judicial decisions, and secondary academic commentary were reviewed from UK, Australian, Nigerian, and EU contexts. Data is interpreted through a normative lens to assess legal effectiveness and policy justification.

## RESULTS

Common types of internal corporate fraud in retail companies also include:

Cash manipulation, with typical examples being cases where a cashier places cash into the register without recording the sale, or withdraws cash from the register without documenting the transaction in the accounting records; Skimming, or the theft of funds not recorded in the books, a specific example of which is the duplication of bank cards using a special device—a skimmer— installed on payment terminals; Payment fraud, which involves false registration of product returns or price changes;

Financial statement fraud, which includes overstating or understating net profit or net asset value through temporary differences, fictitious or understated revenues, concealment or exaggeration of expenses, knowingly false asset valuation, or improper disclosure with the aim of embellishing the company's financial position or evading taxes; Theft of recorded funds by employees, such as stealing cash from the register, reversing register transactions (e.g., canceling a sale after it's entered), destroying logs, and more; Check fraud, which may be carried out by using forged checks made out to the company's bank accounts; Expense reimbursement fraud, with common schemes including charging personal expenses to the company (fake business trips), inflating expenses (e.g., overstating mileage), submitting fake receipts for reimbursement, or double reimbursement (e.g., claiming the same transport expense more than once).[3]

- **The Legal Framework and Rationale**

Section 214 of the Insolvency Act 1986 allows courts to impose liability on directors who continued trading despite knowing insolvency was inevitable. This aims to align director conduct with creditor interests. [4]

- **Under-Enforcement and Practical Challenges**

Wrongful trading cases are rare due to high evidentiary burdens, discretionary enforcement, and procedural complexity. These issues reduce incentives for liquidators to pursue claims[5].

- **Comparative Legal Developments**

In Australia, wrongful trading has evolved into "insolvent trading" with a safe harbour clause to protect directors engaging in restructuring efforts.[6] Nigeria's adoption of the UK model faces similar challenges and calls for a resilience-based reform approach. [7]

- **Theoretical Justification**

While some argue that wrongful trading discourages entrepreneurship and increases risk aversion, others assert it is necessary to counter the moral hazard created by limited liability.[8]

## DISCUSSION

The findings suggest that wrongful trading is conceptually sound but practically ineffective. High thresholds for proving director knowledge and the low rate of successful actions hinder its deterrent capacity. Policy responses, such as director education and resilient legal structures, may offer a balanced approach to protect creditors without discouraging legitimate corporate rescue efforts.

## CONCLUSION

Wrongful trading remains a theoretically justified but underutilized tool for creditor protection. Legal reforms emphasizing prevention, education, and proportional enforcement can enhance its effectiveness across jurisdictions.

## REFERENCES

Keay, A. (2005). *Wrongful trading and the liability of company directors: a theoretical perspective*. Legal Studies, 25(4), 431–461.

M.M. Rychagova, S.N. Kashurnikov. Features of internal corporate fraud in retail. Moscow Economic Journal No. 10, 2020. –P.381-392

Schulte, R. (1996). *Wrongful Trading: An Impotent Remedy?*

Arora, Y. (2022). *What Went Wrong With Wrongful Trading?*

Steele, S., Ramsay, I., & Webster, M. (2019). *Insolvency Law Reform in Australia and Singapore*.

Liman, Y. U., Yusoff, Z. M., & Rahman, R. A. (2024). *The Predicaments of UK Wrongful Trading Liability in Insolvency: Implications for Nigeria*.