



LEGAL CHALLENGES AFFECTING CORROBORATION BY ACCOMPLICES IN IR4.0 ERA

Progress is undeniable. The fourth industrial revolution will be distinctive. It will certainly bring significant changes to the way we live, interact and do business. It is the future of technology where objects, machines and various devices connect with each other in a secure, networked environment. The legal challenges imposed by the IR4.0 are both new and greater. Nowadays, data has become a valuable business asset which stimulates innovation and lawyers must begin to ask the right question to understand the creation process of data assets, its monetary value and how it drives business. In addition to this, lawyers must understand the data of the companies as the companies will use the Big Data to monitor and protect their supply chains and what may be learned from the data is to address challenges and mitigate legal risks.¹

Additionally, courts will also play a crucial role in the push for new rules for digital trade. However, in many countries, they have been criticized because of time-consuming speed and high costs. Hence, if the IR4.0 is to bring positive outcomes to the global communities, the law must make certain adjustments in order to remain effective and utilize the technological advancements. In this context, lawyers need to visualize the impact on the courts of artificial intelligence, block chains, bio-engineering and autonomous machines. As for example, a court in Cleveland, United States of America is using an artificial intelligence tool for sentencing as it can be used as a tool to help predict the outcome of cases. Along with that, there are also some countries such as Australia, Singapore and England that apply IR4.0 in their legal industry such as virtual hearing, video link attendance and audio hearings.

¹ Kannan Chettiar, "Legal Industry to Embrace Industry 4.0," 2018, <https://lawgazette.com.sg/practice/practice-support/legal-industry-to-embrace-industry-4.0/>

Beyond into further examination of the Evidence Act 1950 (“EA”), the term of “corroboration” is not defined. Nevertheless, the definition laid down in the case of ***R v Baskerville***² has been accepted in many local cases. As for instance, in the case of ***Aziz bin Muhamad Din v PP***³ wherein, Augustine Paul JC presented on the word ‘implicate’ and suggested that it does not necessarily mean ‘incriminate’, but it only means to involve.

Ordinarily, corroboration is required in criminal proceedings. The reason is because the accused will be convicted if the prosecution can prove the case against him. Hence, the conviction may be in the form of a fine (which is not serious compared to imprisonment, whipping or a death sentence). However, the accused carries with him a criminal record, which may affect his future possibility of employment, marriage and others. On the other hand, in a civil trial, a defendant is generally liable to pay damages, (i.e. if the damages are the remedy sought) if the plaintiff has successfully proved the case against the defendant. Thus, the need of corroboration stems more from criminal proceedings rather than in civil proceedings. The rule of prudence was developed to insist that corroboration is considered upon the evidence from potentially “unreliable witnesses”. These witnesses may include accomplices, children and complainants in sexual cases. Hence, I will focus more on corroboration of accomplice in this writing.

In view of the IR4.0 period, the fundamental freedoms and the rights of the witnesses are crucial when the judicial system is conducted through an online court and must be secured during a virtual trial in order to prevent injustice from happening. There are several obstacles in acquiring the corroboration by accomplices during the virtual trial as there are chances for the proof to amount to natural injustice. This is due to the fact that there is a lack of safeguards for the accomplices which causes the accomplices to be tampered or coached. If an accomplice provides testimony in an online video trial, their evidence maybe manipulated or tampered, so the judges, solicitors would not know who is in the room or who is influencing the accomplice behind the camera. In reality, conducting a stimulated trial is an open door for someone to tamper or threaten the witness in order to provide evidence in favor of them. It can be performed by coaching the accomplice off-camera or having the accomplice abducted in a remote place and forcing them to read the script prepared by those threatening them, which a blind spot for the tribunal, which is less secured.

² [1916] 2 KB 658

³ [1996] 5 MLJ 473

The absence of face-to-face hearings is another obstacle that amounts to natural injustice. During the virtual trial, only the upper part of the accomplice's body, wherein the body language, facial gestures and the tonal changes of accomplice are difficult for the judges and solicitors to grasp. Eye contact with the accomplice is necessary during the trial. Even though there are enough screens during the online court, it is still difficult to recognize and determine the accomplice's body expressions. Barrister Andy Creer in her statement highlighted that the virtual trial is lack of human aspect and eye contact. Besides, she also stated that *'In a courtroom, the judge is sitting several metres away from you. In between that space and in your peripheral vision, you pick up a range of visual cues from the opponents and witnesses. If you're staring at the pin dot of your screen, you can't really get an idea of what else is going on'*.⁴

Last but not least, online trials can be challenging for the accomplice to testify in cases involving corruption, as the high-ranking person who can easily intimidate the accomplice is often involved in giving the statement in favor of the accused. Although, some might claim that the security system is well secured for the government agencies, in fact, it is not. There are a number of instances in which the government agencies' information have been hacked and leaked.

As a conclusion, online trials can be efficient and cost-saving, but still has a side impact. It should be secure and applicable, unless our government can provide a witness protection guard or the court police to assist the accomplice who is going to testify and provide evidence. Till then, one can only hope that the accomplices will not jeopardize the case.

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⁴ Andy Creer, "The Challenges Ahead for Online Courts," *Hardwicke*, last modified May 14, 2020, <https://hardwicke.co.uk/the-challenges-ahead-for-online-courts/>.