

7.3: Accessory

Learning Objectives

1. Distinguish between accomplice liability and the crime of accessory.
2. Define the criminal act element required for an accessory.
3. Define the criminal intent element required for an accessory.
4. Compare various approaches to grading the crime of accessory.

As stated in [Section 7.1.1 "Accomplice Liability"](#), at early common law, a defendant who helped plan the offense but was not present at the scene when the principal committed the crime was an **accessory before the fact**. A defendant who helped the principal avoid detection after the principal committed the crime was an **accessory after the fact**. In modern times, an accessory before the fact is an **accomplice**, and an accessory after the fact is an **accessory**, which is a separate and distinct offense. Some states still call the crime of accessory “accessory after the fact” Mass. Gen. Laws ch. 274 § 4, accessed January 16, 2011, <http://law.onecle.com/massachusetts/274/4.html>. or “hindering prosecution.” Haw. Rev. Stat. § 710-1030, accessed January 26, 2011, <http://law.justia.com/codes/hawaii/2009/volume-14/title-37/chapter-710/hrs-0710-1030-hm/>.

The difference between an accomplice and an accessory is crucial. An accomplice is responsible for the offense the *principal* commits. An accessory, on the other hand, is guilty of a *separate crime* that is almost always a misdemeanor.

7.3.1 Accessory Act

The **criminal act** element required for an accessory in the majority of jurisdictions is aiding or assisting a principal in escape, concealment, or evasion of arrest and prosecution or conviction after the principal commits a **felony**. Va. Code Ann. § 18.2-19, accessed December 26, 2010, <http://law.onecle.com/virginia/crimes-and-offenses-generally/18.2-19.html>. In most states, a defendant cannot be an accessory to a misdemeanor, although in some states a defendant can be an accessory to a high-level or gross misdemeanor. N.R.S. § 195.030, accessed December 26, 2010, <http://law.onecle.com/nevada/crimes/195.030.html>. In a minority of states, the defendant can be an accessory to any crime. Haw. Rev. Stat. § 710-1030, accessed October 10, 2011, http://www.capitol.hawaii.gov/hrscurrent/Vol14_Ch0701-0853/HRS0710/HRS_0710-1030.htm.

In many states, **words** are enough to constitute the accessory criminal act element. Minn. Stat. Ann. § 609.495, accessed December 23, 2010, <https://www.revisor.mn.gov/statutes/?id=609.495&year=2010>. Often special categories of individuals are exempted from liability as an accessory, typically family members by blood or marriage. Vt. Stat. Ann. tit. 13 § 5, accessed December 23, 2010, www.leg.state.vt.us/statutes/fullchapter.cfm?Title=13&Chapter=001.

7.3.2 Example of Accessory Act

Jim wakes up late at night to the sound of someone pounding on his door. He gets out of bed, walks down the stairs, and opens the door. His father James is on the doorstep. James’s eyes are bloodshot and he is swaying slightly on his feet. He tells Jim that he just got into a car accident and needs to come inside before the police find out about it and begin an investigation. Jim steps aside and lets his father enter the house. The smell of alcohol on his father’s breath is apparent. He thereafter allows his father to spend the night without contacting the police about the accident.

Jim has probably committed the **criminal act** element required for an accessory in many jurisdictions. Jim allowed his father to *escape arrest* and *evade* an alcohol screening after leaving the scene of a car accident, which is most likely **felony** drunk driving and hit and run. He also sheltered his father for the night, *concealing* him from law enforcement. If Jim is in a state that exempts family members from accessory liability, he may not be subject to prosecution because the principal to the crime(s) is his father. If Jim is not in a state that relieves family members from accessory liability, he could be fully prosecuted for and convicted of this offense.

Crack the Code

Compare the following state laws:

Haw. Rev. Stat. § 710-1030:


Hindering prosecution in the second degree.

(1) A person commits the offense of hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for **a crime**, he renders assistance to such person.

(2) Hindering prosecution in the second degree is a misdemeanor [L 1972, c 9, pt of §1]

Mass. Gen. Laws ch. 274 § 4:

Whoever, after the commission of **a felony**, harbors, conceals, maintains or assists the principal felon or accessory before the fact, or gives such offender any other aid, knowing that he has committed a felony or has been accessory thereto before the fact, with intent that he shall avoid or escape detention, arrest, trial or punishment, shall be an accessory after the fact, and, except as otherwise provided, be punished by imprisonment in the state prison for not more than seven years or in jail for not more than two and one half years or by a fine of not more than one thousand dollars.



In Hawaii, a defendant can
be an accessory to *any* crime; in
Massachusetts, a defendant can only be
an accessory to a *felony*...

Figure 7.3 Crack the Code

7.3.3 Accessory Intent

The criminal intent element required for an accessory has two parts. First, the defendant must act with **general intent** or **knowingly** or **awareness** that the principal committed a crime. Second, the defendant must help or assist the principal escape or evade arrest or

prosecution for and conviction of the offense with **specific intent** or **purposely**. Mass. Gen. Laws ch. 274 § 4, accessed December 26, 2010, <http://law.onecle.com/massachusetts/274/4.html>.

7.3.4 Example of Accessory Intent

Review the example with Jim and James given in [Section 7](#). In this case, Jim is **aware** that James committed a crime because James told Jim he got into an accident and James's intoxicated condition was apparent. Nonetheless, Jim **purposely** helped James evade arrest and an alcohol screening by sheltering him in his home while the effects of the alcohol dissipated. Thus Jim probably has the **criminal intent** required for liability as an accessory in most jurisdictions. If Jim is not in a state that exempts family members from accessory liability, he could be fully subject to prosecution for and conviction of this offense.

7.3.5 Accessory Grading

As stated in [Section 7.3](#), in many jurisdictions accessory is an offense that is **graded** less severely than the crime committed by the principal. Accessory is typically graded as a misdemeanor, Haw. Rev. Stat. § 710-1030, accessed January 9, 2011, <http://law.justia.com/codes/hawaii/2009/volume-14/title-37/chapter-710/hrs-0710-1030-hm/>. although in some jurisdictions it is graded as a felony, Idaho Code Ann. § 18-206, accessed January 9, 2011, www.legislature.idaho.gov/idstat/Title18/T18CH2SECT18-206.htm.

Table 7.1 Comparison of Accomplice, Accessory, and Vicarious Liability

Type of Liability	Criminal Act	Criminal Intent
Accomplice	Aid, assist commission of a crime	Specific or purposely, or general or knowingly, depending on the jurisdiction
Accessory	Aid, assist evasion of prosecution or conviction for a felony, high-level misdemeanor, or any crime	General or knowingly (crime committed) plus specific or purposely (principal evades prosecution or conviction)
Vicarious	Committed by an individual in a special relationship with the defendant	Belongs to an individual in a special relationship with the defendant

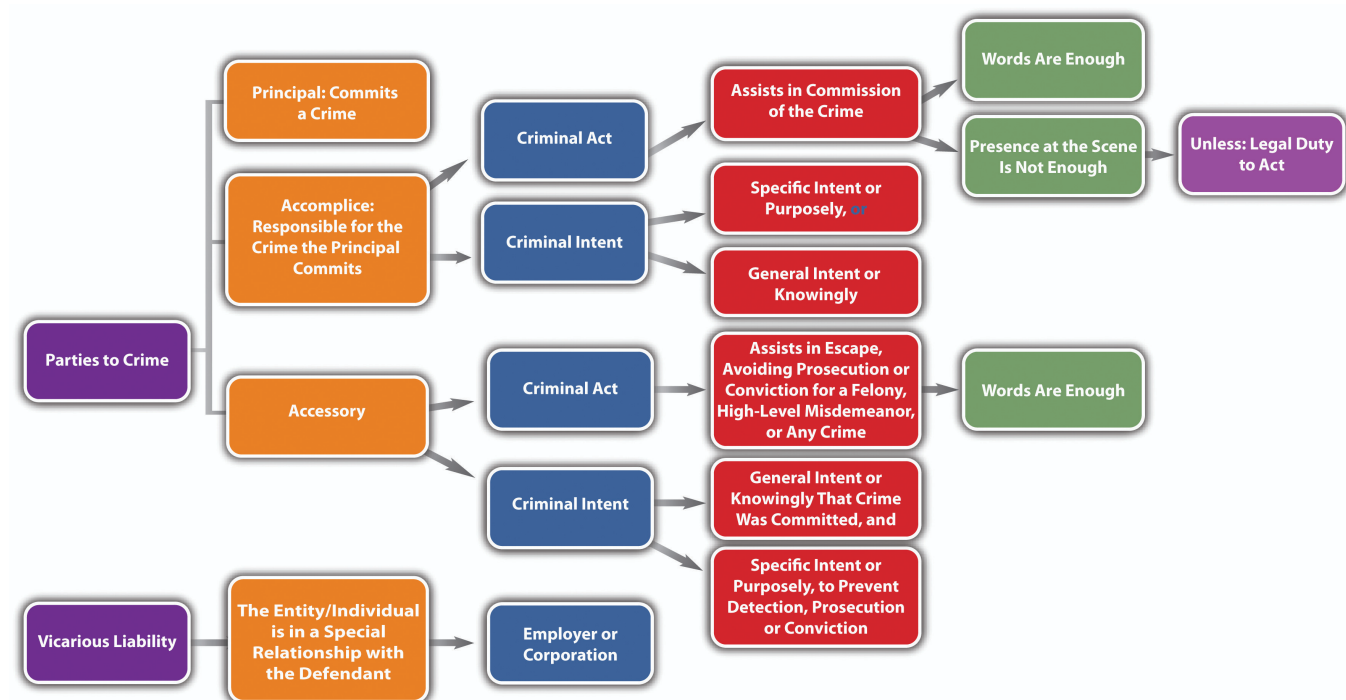


Figure 7.4 Diagram of Parties to Crime

7.3.6 Exercises

- Accomplice liability holds a complicit defendant accountable for the crime the principal commits; accessory is a separate crime that is typically a misdemeanor.
- The criminal act element required for an accessory is aiding or assisting the principal escape or evade arrest, prosecution for, or conviction of a felony, high-level misdemeanor, or any crime, depending on the jurisdiction. In many jurisdictions words are enough to constitute the accessory criminal act element.
- The criminal intent element required for an accessory has two parts. The defendant must act
 - with general intent or knowingly that the principal committed the crime,
 - with specific intent or purposely to help the principal escape or evade arrest, prosecution for, or conviction of the offense.
- In many jurisdictions, the crime of accessory is graded lower than the crime the principal committed; typically, it is graded as a misdemeanor, although in some jurisdictions, it is graded as a felony.

7.3.7 Exercises

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Cory watches as her sister Amanda breaks into a parking meter across the street and starts scooping change into her purse. Amanda thereafter runs into a nearby alley and hides behind a dumpster. A police officer arrives on the scene and asks Cory if she witnessed the crime. Cory responds, “No, I didn’t notice anything.” The police officer does a search, does not find Amanda, and leaves. Has Cory committed a crime? If your answer is yes, which crime has Cory committed, and does Cory have a possible defense?
2. Read *U.S. v. Hill*, 268 F.3d 1140 (2001). In *Hill*, the defendant was convicted of harboring a fugitive and being an accessory when she helped her husband escape the country to avoid prosecution for a failure to pay child support. The defendant claimed that her convictions were unconstitutional because they contravened her right to privacy, association, marriage, and due process. Did the US Court of Appeals for the Ninth Circuit uphold the defendant’s convictions? The case is available at this link: <http://caselaw.findlaw.com/us-9th-circuit/1215479.html>.
3. Read *State v. Truesdell*, 620 P.2d 427 (1980). In *Truesdell*, the prosecution appealed the dismissal of the defendant’s case that was a prosecution for accessory to her twelve-year-old son’s felony shooting of her ex-husband. The lower court held that the defendant could not be an accessory to a felony because her son was not an adult who could be charged with a felony. Did the Oklahoma Court of Criminal Appeals reverse the lower court and permit the defendant to be tried as an accessory? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=14038267185437754114&q=State+v.+Truesdell+620+P.2d+427+%281980%29&hl=en&as_sdt=2,5.

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