

## 7.4: End-of-Chapter Material

### 7.4.1 Summary

Often more than one criminal defendant participates in the commission of a crime. Defendants working together with a common criminal purpose are acting with complicity and are responsible for the same crimes, to the same degree.

At early common law, there were four parties to a crime. A principal in the first degree actually committed the crime. A principal in the second degree was present at the crime scene and assisted in the crime's commission. An accessory before the fact was not present at the crime scene but helped prepare for the crime's commission. An accessory after the fact helped a party after he or she committed a crime by providing aid in escaping or avoiding arrest and prosecution or conviction. In modern times, there are only two parties to a crime: a principal, who is in the same category with his or her accomplice(s), and accessory(ies). Principals actually commit the crime, and they and their accomplices are criminally responsible for it. Accessories play the same role as accessories after the fact at common law.

The criminal act element required to be an accomplice in most jurisdictions is assistance in the commission of a crime. Words are enough to constitute the accomplice criminal act. Mere presence at the scene, even presence at the scene combined with flight after the crime's commission, is not enough to constitute the accomplice criminal act unless there is a legal duty to act.

The criminal intent element required for accomplice liability in many jurisdictions is specific intent or purposely to commit the crime at issue. In some states, general intent or knowingly that the principal will commit the crime creates an inference of intent if the offense is serious. In a minority of jurisdictions, general intent or knowingly that the principal will commit the crime is sufficient.

The natural and probable consequences doctrine holds accomplices criminally responsible for all crimes the principal commits that are reasonably foreseeable. In many jurisdictions an accomplice can be prosecuted for a crime the principal commits even if the principal is not prosecuted or acquitted.

Vicarious liability transfers criminal responsibility from one party to another because of a special relationship. Vicarious liability is common between employers and employees and is the basis for corporate criminal liability. Pursuant to modern corporate criminal liability, a corporation can be fined for a crime(s) a corporate agent or employee commits during the scope of employment. The corporate agent or employee also is criminally responsible for his or her conduct. In general, the law disfavors individual criminal vicarious liability. The law in this area is evolving as the incidence of juveniles committing crimes increases.

In modern times, an accessory is the equivalent of an accessory after the fact at common law. The criminal act element required for an accessory is providing assistance to a principal in escape, avoiding detection, or arrest and prosecution, or conviction for the commission of a felony, high-level misdemeanor, or any crime, depending on the jurisdiction. Words are enough to constitute the accessory criminal act. Several jurisdictions exempt family members from criminal responsibility for acting as an accessory.

The criminal intent element required for an accessory in most jurisdictions is general intent or knowingly that the principal committed a crime, and specific intent or purposely that the principal escape, avoid detection, or arrest and prosecution, or conviction for the offense. Accessory is a separate crime that is usually graded as a misdemeanor, although some jurisdictions grade accessory as a felony.

### 7.4.2 YOU BE THE LAW PROFESSOR

You are a law professor searching for cases to illustrate certain legal concepts for your students. Read the prompt, review the case, and then decide which **legal concept** it represents. Check your answers using the answer key at the end of the chapter.

1. The defendant's vehicle matched the description of a vehicle seen in the vicinity of a burglary before the burglary, during the burglary, and after the burglary. The defendant claimed that the evidence was insufficient to prove he was an accomplice to the burglary. Does this case illustrate the legal concept of **accomplice act**, **accomplice intent**, or **both**? Read *Collins v. State*, 438 So. 2d 1036 (1983). The case is available at this link: [http://scholar.google.com/scholar\\_case?case=8573128029213310764&hl=en&as\\_sdt=2,5&as\\_vis=1](http://scholar.google.com/scholar_case?case=8573128029213310764&hl=en&as_sdt=2,5&as_vis=1).
2. The defendants, foster parents, were found guilty as accomplices to the felony murder of their two-year-old foster daughter. Although both defendants testified that the victim died from injuries experienced after a fall from a swing, medical experts reported that the victim's injuries were inconsistent with that testimony and appeared to be the result of child abuse. The jury convicted the defendants as accomplices to felony murder after a jury instruction stating that an omission to act could constitute

the criminal act element for accomplice liability when there is a duty to act, and parents have a legal duty to come to the aid of their children. Does this case illustrate the legal concept of **omission to act**, **statutory interpretation**, or **both**? Read *State v. Jackson*, 137 Wn. 2d 712 (1999). The case is available at this link: <http://caselaw.findlaw.com/wa-supreme-court/1412039.html>.

3. The defendant, an electrical contracting company, was found guilty of violating OSHA regulations that led to an employee's death. The victim, an apprentice in training, touched a live electrical wire and died from electrocution. The OSHA statute in question required "willful" conduct on behalf of the company. The jury instruction on willful stated that a company acted willfully or knowingly if individual employees of that company acted knowingly. The evidence indicated that some employees knew or were aware of live wiring in the vicinity of the accident. The defendant appealed and claimed that the jury instruction should have stated that a company acted willfully or knowingly if individual employees acted knowingly *and* had a *duty to report* that knowledge to the company. Does this case illustrate the legal concept of **criminal intent**, **vicarious liability**, or **both**? Read *U.S. v. L.E. Meyers Co.*, 562 F.3d 845 (2009). The case is available at this link: [http://scholar.google.com/scholar\\_case?case=2854285863509787279&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=2854285863509787279&hl=en&as_sdt=2&as_vis=1&oi=scholar).
4. The defendant was convicted of both first-degree murder and accessory after the fact to that murder. The trial court did not instruct the jury that the offenses were mutually exclusive and that they could only convict the defendant of one or the other. The defendant appealed on the basis that he was entitled to a jury instruction that prevented a conviction on both murder and accessory after the fact to murder. Does this case illustrate the legal concept of the **criminal elements required for accessory after the fact**, the **criminal elements required for murder**, or **both**? Read *State v. Melvin*, No. 382PA09 (North Carolina 2010). The case is available at this link: <http://caselaw.findlaw.com/nc-supreme-court/1549865.html>.

### 7.4.3 Cases of Interest

- *State v. Merida-Medina*, 191 P.3d 708 (2008), discusses accomplice liability: [http://scholar.google.com/scholar\\_case?case=9533921177591527482&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=9533921177591527482&hl=en&as_sdt=2&as_vis=1&oi=scholar).
- *State v. Guminga*, 395 N.W.2d 344 (1986), discusses vicarious liability and due process: [http://scholar.google.com/scholar\\_case?case=9718401866480992202&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=9718401866480992202&hl=en&as_sdt=2&as_vis=1&oi=scholar).
- *Staten v. State*, 519 So. 2d 622 (1988), discusses principal and accessory criminal responsibility: [http://scholar.google.com/scholar\\_case?case=5691885691013540689&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=5691885691013540689&hl=en&as_sdt=2&as_vis=1&oi=scholar).

### 7.4.4 Articles of Interest

- Spectator liability in gang rape: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1664162](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664162)
- Corporate criminal liability: [www.pointoflaw.com/feature/archives/2009/07/corporate-criminal-liability-s.php](http://www.pointoflaw.com/feature/archives/2009/07/corporate-criminal-liability-s.php)
- Criminal vicarious liability in general: [www.experiencefestival.com/a/Vicarious\\_liability\\_criminal/id/1994611](http://www.experiencefestival.com/a/Vicarious_liability_criminal/id/1994611)

### 7.4.5 Website of Interest

- White collar crime blog site: [http://lawprofessors.typepad.com/whitecollarcrime\\_blog/2009/12/recent-articles.html](http://lawprofessors.typepad.com/whitecollarcrime_blog/2009/12/recent-articles.html)

### 7.4.6 Statistics of Interest

- FBI statistics on pending corporate and securities fraud cases: [www.fbi.gov/stats-services/publications/financial-crimes-report-2009/financial-crimes-report-2009#corporate](http://www.fbi.gov/stats-services/publications/financial-crimes-report-2009/financial-crimes-report-2009#corporate)

### 7.4.7 Answers to Exercises

From Section 7.1

1. Penelope could be charged with and convicted of robbery as an **accomplice** in many jurisdictions. Penelope *assisted* Justin by telling him what time the security guard took his break. Although Penelope was not present at the scene, if the trier of fact determines that Penelope had the proper criminal intent required for accomplice liability (**specific intent** or **purposely** or **general intent** or **knowingly**, depending on the jurisdiction) then Penelope can be held accountable for this crime. Note that Penelope assisted Justin with words and that words are enough to constitute the criminal act element required for accomplice liability.
2. The Supreme Court of Minnesota reversed the defendant's murder conviction, holding that the Minnesota Accomplice Liability Statute required more than passive acquiescence as a criminal act element. The court held that evidence of conduct occurring *after* the crime could raise an **inference** of participation *before* or *during* the crime's commission, but in this case, the evidence was insufficient to uphold the verdict.

3. The Court of Criminal Appeals of Texas upheld the defendant's conviction because the video of the defendant's confession corroborated the accomplice's testimony. The court specifically held that corroborating evidence does not have to be enough to prove beyond a reasonable doubt that the defendant committed the crime; it only has to "tend to connect him to the offense." *Joubert v. State*, 235 SW3d 729, 731 (2007), accessed January 22, 2011, [http://scholar.google.com/scholar\\_case?case=10119211983865864217&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=10119211983865864217&hl=en&as_sdt=2&as_vis=1&oi=scholar).

### 7.4.8 Answers to Exercises

From Section 7.2

1. ABC Corporation probably is not vicariously liable for criminal homicide because Brad's reckless conduct did not occur during the scope of employment; the criminal homicide occurred as Brad was *driving home*. However, if Brad were required to work while driving home (by making work-related phone calls, for example), vicarious liability could be present in this instance.
2. The Criminal Court of the City of New York upheld the order to stand trial, holding that the prosecution was within its rights to charge the members of the board of directors under the statute. The court stated that whether the board of directors could be held vicariously liable was a question of fact to be determined by the judge or jury at trial.
3. The jury instruction explains that the statute criminalizes **vicarious liability**, not **accomplice liability**. The defendant could also be charged as a principal or accessory under section (a) of the statute.

### 7.4.9 Answers to Exercises

From Section 7.3

1. Cory has probably committed the crime of **accessory** in most jurisdictions. Cory's response to the police officer's question was false, and it appears to be made with the intent to help Amanda escape detection. Note that Cory renders assistance using words, but words are enough to constitute the criminal act element required for accessory. Cory is not an accomplice to Amanda's crime because she did not act to assist Amanda with the parking meter destruction and theft; she only acted *after* the crime was committed. Her failure to report the crime is probably not an "omission to act" because it is extremely unlikely that a statute exists requiring individuals to report theft committed in their presence, creating a **legal duty to act**. A potential defense to accessory would be the *family* relationship, which creates an exemption to accessory in some jurisdictions.
2. The US Court of Appeals for the Ninth Circuit upheld the defendant's conviction for harboring a fugitive because the statute at issue was justified by the *compelling government interest* in apprehending deadbeat parents. The court reversed the accessory conviction on separate grounds (an improperly drafted indictment).
3. The Oklahoma Court of Criminal Appeals reversed the lower court and allowed the defendant to be prosecuted for accessory. The court held that it is not necessary for the principal to be charged with or convicted of a felony to prosecute another for accessory to that felony, so the child's age or prosecutability is irrelevant.

### 7.4.10 Answer to Law and Ethics Question

1. Insisting that at least **one** individual employee of the corporation commit a crime with the requisite intent before imposing vicarious liability upon the corporation is **ethical**, and it promotes justice. Aggregating intent could have far-reaching consequences outside the arena of vicarious corporate liability. For example, it could create unfair and overly harsh sentencing if extended to accomplice liability. When accomplices work together, at least one accomplice must possess the intent for the crime to hold other accomplices responsible. Imagine the possibilities if the accomplices' intent could be aggregated and raised to a more sinister level. Accomplices working together to commit a misdemeanor could be prosecuted for a serious and unforeseeable felony if their intents could be combined and elevated. Vicarious corporate liability is already a legal fiction because it transfers criminal responsibility for conduct from an individual to a business entity. This transfer of liability punishes the owners of the corporation for crimes they did not commit. If prosecutors could stretch the fiction further by combining the intents of various corporate employees and elevating them, this would not comport with notions of fairness.

### 7.4.11 Answers to You Be the Law Professor

1. In this case, the District Court of Appeal of Florida held that the evidence was insufficient to support either the criminal act element or the criminal intent element required to be an accomplice. First, the court held that the identification of the vehicle proved "mere presence at the scene," which is not sufficient to constitute the accomplice criminal act. The court thereafter held that an inference of intent to commit burglary was inappropriate when the prosecution did not prove the criminal act that was the basis of the inference. Thus you can use this case to illustrate the legal concepts of accomplice **criminal act and intent**.

2. In this case, the Supreme Court of Washington reviewed the accomplice liability statute and noted that it did *not* include omission to act. The statute was predicated on the Model Penal Code § 2.06(3)(a)(iii), which expressly includes omission to act as sufficient for accomplice liability when there is a legal duty to act, so the court held that the Washington State Legislature's rejection of omission to act in the accomplice liability statute was deliberate. The court reversed the felony murder convictions because the jury instruction did not comport with the statute (RCW 9A.08.020 (3)) as they interpreted it. The court also expressly stated that in Washington, omission to act cannot create accomplice liability. Thus you can use this case to illustrate the legal concepts of **statutory interpretation** and **omission to act**.
3. The US Court of Appeals for the Seventh Circuit held that the jury instruction should include the individual employee's **duty to report** knowledge or awareness of dangerous conditions when defining "willful" conduct under the OSHA statute. The court held that an individual employee's knowledge or awareness could not be imputed to the company unless the individual employee had a duty to report that knowledge. The court's holding focused on *when* a court should impute criminal intent to an employer or company and the *definition* of criminal intent under the statute. Thus you can use this case to illustrate the legal concepts of **vicarious liability** and **criminal intent**.
4. The North Carolina Supreme Court discussed the elements of first-degree murder, aiding and abetting first-degree murder, and accessory after the fact to murder. The court reached the conclusion that first-degree murder and accessory after the fact to that murder are mutually exclusive, based on the criminal elements required for each offense. Thus you can use this case to illustrate the legal concepts of the **elements of first-degree murder** and the **elements of accessory after the fact**.

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