

7.2: Vicarious Liability

Learning Objectives

1. Distinguish between accomplice liability and vicarious liability.
2. Distinguish between corporate criminal vicarious liability and individual criminal vicarious liability.

Vicarious liability, a concept discussed in Chapter 4, also transfers liability from one defendant to another. However, vicarious liability should not be confused with accomplice liability. Accomplice liability is based on the defendant's participation in a criminal enterprise and **complicity** with the criminal actor or principal, but vicarious liability transfers a defendant's criminal responsibility for the crime to a different defendant because of a *special relationship*. With vicarious liability, the acting defendant also is criminally responsible for his or her conduct. Similar to the civil law concept of respondeat superior discussed in Chapter 1, vicarious liability in criminal law is common between employers and employees. It is also the basis of **corporate liability**, which is discussed in Section 7.2.1 "Corporate Liability".

7.2.1 Corporate Liability

At early common law, corporations were not criminally prosecutable as separate entities, which was most likely because in England, corporations were owned and operated by the government. In modern times, American corporations are private enterprises whose actions can seriously injure other individuals and the economy. Thus a corporation can be criminally responsible for conduct apart from its owners, agents, or employees. *New York Central R. Co. v. U.S.*, 212 U.S. 481 (1909), accessed December 21, 2010, <http://supreme.justia.com/us/212/481>. In general, this is a **vicarious liability**, transferring criminal responsibility for an offense from an **agent** or **employee** of the corporation to the corporation itself, based on the employment relationship. Of course, the agent or employee also is responsible for the crime he or she commits.

A corporation is vicariously liable only if an agent or employee commits a crime *during* the agent or employee's scope of employment. 720 ILCS § 5/5-4, accessed December 26, 2010, <http://law.onecle.com/illinois/720ilcs5/5-4.html>. As the Model Penal Code states, "[a] corporation may be convicted of the commission of an offense if...the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment" (Model Penal Code § 2.07(1)(a)). The criminal punishment for a corporation is generally payment of a fine.

7.2.2 Example of Corporate Liability

Harry, an employee of Burger King Corporation, shreds corporate documents in his office when Burger King is sued civilly for sexual harassment in a multimillion-dollar class action suit. Under modern theories of corporate liability, both Harry and Burger King could be criminally prosecuted for obstruction of justice. Note that Burger King's liability is **vicarious** and depends on its relationship with Harry as an employer and the fact that Harry is acting within the scope of employment. Vicarious liability is distinguishable from **accomplice liability**, where the accomplice must be complicit with the criminal actor. The owners of Burger King, who are the corporate shareholders, did not actively participate in Harry's conduct, although they will share in the punishment if the corporation is fined.



Figure 7.2 Vicarious and Corporate Liability

7.2.3 Individual Criminal Vicarious Liability

Generally speaking, criminal law disfavors **criminal vicarious liability**, the exception being corporate liability discussed in [Section 7.2.1 "Corporate Liability"](#). Criminal vicarious liability violates the basic precept that individuals should be criminally accountable for their own conduct, not the conduct of others. *State v. Akers*, 400 A.2d 38 (1979), accessed December 26, 2010, http://scholar.google.com/scholar_case?case=12639244883487184852&hl=en&as_sdt=2&as_vis=1&oi=scholar. Although accomplice liability appears to hold an accomplice responsible for principals' conduct, in reality the accomplice is committing a criminal act supported by criminal intent and is punished accordingly. In addition, other statutes that appear to impose criminal liability vicariously are actually holding individuals responsible for their *own* criminal conduct. Some examples are statutes holding **parents** criminally responsible when their **children** commit crimes that involve weapons belonging to the parents, and offenses criminalizing contributing to the delinquency of a minor. In both of these examples, the parents are held accountable for *their* conduct, such as allowing children to access their guns or be truant from school. The law is evolving in this area because the incidence of juveniles committing crimes is becoming increasingly prevalent.

7.2.4 Exercises

- Accomplice liability holds an accomplice accountable when he or she is complicit with the principal; vicarious liability imposes criminal responsibility on a defendant because of a special relationship with the criminal actor.
- In many jurisdictions, corporations are vicariously liable for crimes committed by employees or agents acting within the scope of employment. Individual criminal vicarious liability is frowned on, but the law in this area is evolving as the incidence of juveniles committing crimes increases.

7.2.5 Exercises

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

1. Brad, the president and CEO of ABC Corporation, recklessly hits and kills a pedestrian as he is driving home from work. Could ABC Corporation be held vicariously liable for criminal homicide? Why or why not?
2. Read *People v. Premier House, Inc.*, 662 N.Y.S 2d 1006 (1997). In *Premier House*, the defendant, a housing cooperative that was incorporated, and members of the housing cooperative board of directors were ordered to stand trial for violating a New York law requiring that window guards be installed on apartment buildings. A child died after falling out of one of the windows. The members of the board of directors appealed on the basis that their positions were merely honorary, and they had no personal involvement in the crime. Did the Criminal Court of the City of New York uphold the order as to the members of the board of directors? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=6854365622778516089&hl=en&as_sdt=2&as_vis=1&oi=scholar.
3. Read [Connecticut General Statute § 53a-8\(b\)](#), which criminalizes the sale or provision of a firearm to another for the purpose of committing a crime. The statute is available at this link: <http://law.justia.com/connecticut/codes/2005/title53a/sec53a-8.html>. Does this statute create **accomplice liability** or **vicarious liability**? Read the [Connecticut Criminal Jury Instruction 3.1-4](#) for an explanation of the statute. The jury instruction is available at this link: www.jud.ct.gov/ji/criminal/part3/3.1-4.htm.

7.2.5.1 LAW AND ETHICS: LIFE CARE CENTERS OF AMERICA, INC.

Is a Corporation Criminally Accountable When Its Employees Are Not?

Read *Commonwealth v. Life Care Centers of America, Inc.*, 456 Mass. 826 (2010). The case is available at this link: http://scholar.google.com/scholar_case?case=12168070317136071651&hl=en&as_sdt=2&as_vis=1&oi=scholar. In *Life Care Centers*, a resident of the Life Care Center nursing home died in 2004 from injuries sustained when she fell down the front stairs while attempting to leave the facility in her wheelchair. The resident could try to leave the facility because she was not wearing a prescribed security bracelet that both set off an alarm and temporarily locked the front doors if a resident approached within a certain distance of those doors. The defendant, Life Care Centers of America, Inc., a corporation that operates the nursing home, was indicted for involuntary manslaughter and criminal neglect. Garrett G. Gillespie, Kristen S. Scammon, “SJC Limits Corporate Criminal Liability,” Martindale.com website, accessed January 24, 2011, www.martindale.com/corporate-law/article_Mintz-Levin-Cohn-Ferris-Glovsky-Popeo-PC_1047124.htm. The criminal intent element required for involuntary manslaughter and criminal neglect in Massachusetts is **reckless** intent. The evidence indicated that the order requiring the victim to wear a security bracelet was *negligently* edited out of the victim’s treatment sheet, based on the actions of more than one employee. The individual employee who left the victim near the stairs without the security bracelet relied on the orders that did not indicate a need for the bracelet. There was no evidence that any *individual* employee of Life Care Centers of America, Inc. was **reckless**. The prosecution introduced a theory of “collective knowledge” of the actions or failure to act of the corporation’s employees. The prosecution’s premise was that the several individual instances of negligent conduct combined to create reckless conduct that could be imputed to the corporation vicariously. The Massachusetts Supreme Court unanimously held that the corporation *could not* be held criminally responsible unless *one individual employee* could be held criminally responsible. *Commonwealth v. Life Care Centers of America, Inc.*, 456 Mass. 826 (2010), accessed January 24, 2011, http://scholar.google.com/scholar_case?case=12168070317136071651&hl=en&as_sdt=2&as_vis=1&oi=scholar.

1. Do you think it is *ethical* to allow a corporation to escape criminal responsibility for reckless involuntary manslaughter and criminal neglect when several employees’ negligent conduct caused the death, rather than one employee’s reckless conduct? Why or why not?

Check your answer using the answer key at the end of the chapter.

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