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Chapter 7

Parties to Crime

Congress can impute to a corporation the commission of certain criminal offenses and subject it to criminal prosecution therefor.

- *New York Central R. Co. v. U.S.*, cited in Section 7.2.1
"Corporate Liability"



Source: Image courtesy of Jane F. Kardashian, MD.

7.1 Parties to Crime

LEARNING OBJECTIVES

1. Identify the four parties to crime at early common law.
2. Identify the parties to crime in modern times.
3. Define the criminal act element required for accomplice liability.
4. Define the criminal intent element required for accomplice liability.
5. Define the natural and probable consequences doctrine.
6. Discuss the consequences of accomplice liability.
7. Determine whether an accomplice can be prosecuted when the principal is not prosecuted or acquitted.

1. Working together with a common criminal purpose and design.
2. At early common law, a defendant who committed a crime with the help of other defendants.
3. At early common law, a defendant who was present at the crime scene and helped a principal in the first degree commit a crime.
4. At early common law, a defendant who was not present at the crime scene and helped a principal in the first degree prepare to commit a crime.
5. At early common law, a defendant who helped a principal escape or avoid arrest, prosecution for, or conviction of a crime.
6. A defendant who commits a crime with the complicity of other defendants.
7. A defendant who helps a principal commit a crime.

Often more than one criminal defendant plays a role in the commission of a crime. Defendants working together with a common criminal purpose or design are acting with **complicity**¹. When the participation and criminal conduct varies among the defendants, an issue arises as to *who* is responsible for *which* crime and to *what degree*. This chapter analyzes different parties to crime, along with their accompanying criminal liability. Chapter 8 "Inchoate Offenses" examines crimes that necessarily involve more than one person such as **conspiracy** and **solicitation**, as well as another **inchoate** or incomplete crime, **attempt**.

Accomplice Liability

At early common law, parties to crime were divided into four categories. A **principal in the first degree**² actually committed the crime. A **principal in the second degree**³ was present at the scene of the crime and assisted in its commission. An **accessory before the fact**⁴ was not present at the scene of the crime, but helped prepare for its commission. An **accessory after the fact**⁵ helped a party to the crime after its commission by providing comfort, aid, and assistance in escaping or avoiding arrest and prosecution or conviction.

In modern times, most states and the federal government divide parties to crime into two categories: **principal**⁶sCal. Penal Code § 31, accessed December 20, 2010, <http://law.onecle.com/california/penal/31.html>. and their **accomplices**⁷, and **accessories**.Idaho Code Ann. § 18-205, accessed December 20, 2010, <http://www.legislature.idaho.gov/idstat/Title18/T18CH2SECT18-205.htm>. The criminal actor is referred to as the **principal**, although all **accomplices** have equal criminal responsibility as is discussed in Section 7.1 "Parties to Crime".

Accomplice Elements

An accomplice under most state and federal statutes is responsible for the same crime as the criminal actor or **principal**.¹⁸ U.S.C. § 2, accessed December 20, 2010, <http://codes.lp.findlaw.com/uscode/18/1/1/2>. However, accomplice liability is **derivative**; the accomplice does not actually have to commit the crime to be responsible for it. The policy supporting accomplice liability is the idea that an individual who willingly participates in furthering criminal conduct should be accountable for it to the same extent as the criminal actor. The degree of participation is often difficult to quantify, so statutes and cases attempt to segregate blameworthy accomplices based on the **criminal act** and **intent** elements, as is discussed in [Section 7.1 "Parties to Crime"](#).

Accomplice Act

In the majority of states and federally, an accomplice must voluntarily act in some manner to *assist* in the commission of the offense. Some common descriptors of the **criminal act** element required for accomplice liability are aid, abet, assist, counsel, command, induce, or procure. K.S.A. § 21-3205, accessed December 20, 2010, http://kansasstatutes.lesterama.org/Chapter_21/Article_32/#21-3205. Examples of actions that qualify as the accomplice criminal act are helping plan the crime, driving a getaway vehicle after the crime's commission, and luring a victim to the scene of the crime. The Model Penal Code defines the accomplice criminal act element as "aids...or attempts to aid such other person in planning or committing [the offense]" (Model Penal Code § 2.06(3) (a) (ii)).

In many states, **words** are enough to constitute the criminal act element required for accomplice liability. N.Y. Penal Law § 20.00, accessed December 26, 2010, http://law.onecle.com/new-york/penal/PEN020.00_20.00.html. On the other hand, mere presence at the scene of the crime, even presence at the scene combined with *flight*, is not sufficient to convert a bystander into an accomplice. *Commonwealth v. Hargrave*, 745 A.2d 20 (2000), accessed December 20, 2010, http://scholar.google.com/scholar_case?case=14481330811091769472&hl=en&as_sdt=2&as_vis=1&oi=scholar. However, if there is a **legal duty to act**, a defendant who is present at the scene of a crime without preventing its occurrence could be liable as an accomplice in many jurisdictions. *People v. Rolon*, 160 Cal. App. 4th 1206 (2008), accessed December 20, 2010, <http://caselaw.findlaw.com/ca-court-of-appeal/1308666.html>. As the Model Penal Code provides, "[a] person is an accomplice of another person in the commission of an offense if...having a legal duty to prevent the commission of the offense, fails to make proper effect so to do" (Model Penal Code § 2.06(3)(a)(iii)).

Example of a Case Lacking Accomplice Act

Review the criminal law issues example in Chapter 1 "Introduction to Criminal Law", Section 1.2.1 "Example of Criminal Law Issues". In that example, Clara and Linda go on a shopping spree. Linda insists that they browse an expensive department store. After they enter the lingerie department, Linda surreptitiously places a bra into her purse. Clara watches, horrified, but does not say anything, even though a security guard is standing nearby. As Linda and Clara leave the store, an alarm is activated. Linda and Clara run away with the security guard in pursuit. In this case, Clara has probably *not* committed the criminal act element required for accomplice liability. Although Clara was *present at the scene* of the crime and did not alert the security guard, mere presence at the scene is not sufficient to constitute the accomplice criminal act. Clara fled the scene when the alarm went off, but presence at the scene of a crime combined with flight is *still not enough* to comprise the accomplice criminal act. Thus Clara has probably not committed theft as an accomplice, and only Linda is subject to a criminal prosecution for this offense.

Example of Accomplice Act

Phoebe, the parent of a two-year-old named Eliza, watches silently as her live-in boyfriend Ricky beats Eliza. In Phoebe's state, parents have a duty to come to the aid of their children if their safety is threatened. Ricky severely injures Eliza, and both Phoebe and Ricky are arrested and charged with battery and child endangerment. Phoebe probably *has* committed the criminal act element required for accomplice liability in many jurisdictions. Phoebe does not personally act to physically harm her child. However, her *presence at the scene* combined with a *legal duty to act* could be enough to make her an accomplice. Thus Phoebe has most likely committed battery and child endangerment as an accomplice, and both *she* and *Ricky* are subject to a criminal prosecution for these offenses.

Accomplice Intent

The criminal intent element required for accomplice liability varies, depending on the jurisdiction. In many jurisdictions, the accomplice must act with **specific intent** or **purposely** when aiding or assisting the principal. Or. Rev. Stat. § 161.155, accessed December 20, 2010, <https://www.oregonlaws.org/ors/161.155>. Specific intent or purposely means the accomplice desires the principal to commit the crime. The Model Penal Code follows this approach and requires the accomplice to act "with the purpose of promoting or facilitating the commission of the offense" (Model Penal Code § 2.06(3) (a)). In other jurisdictions, if the crime is *serious* and the accomplice acts with **general intent** or **knowingly** or has *awareness* that the principal will commit the crime with his or her assistance, intent to further the crime's commission could be inferred. *People v. Lauria*, 251 Cal. App. 2d 471 (1967),

accessed December 21, 2010, http://scholar.google.com/scholar_case?case=686539897745974621&hl=en&as_sdt=2&as_vis=1&oi=scholarr. In a minority of jurisdictions, only **general intent** or acting **knowingly** that the crime will be promoted or facilitated is required, regardless of the crime's seriousness. Washington Rev. Code Ann. § 9A.08.020 (3) (a), accessed December 21, 2010, <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.08.020>.

Example of Accomplice Intent

Joullian, a hotel owner, rents a hotel room to Winnifred, a prostitute. In a state that requires an accomplice to act with **specific intent** or **purposely**, Joullian must *desire* Winnifred to commit prostitution in the rented room to be Winnifred's accomplice. Evidence that Joullian stands to benefit from Winnifred's prostitution, such as evidence that he will receive a portion of the prostitution proceeds, could help prove this intent. If Joullian's state allows for an inference of **specific intent** or **purposely** with *serious* crimes when an accomplice acts with **general intent** or **knowingly**, it is unlikely that prostitution is a felony that would give rise to the inference. If Joullian's state requires only **general intent** or **knowingly** for accomplice liability regardless of the crime's seriousness, to be deemed an accomplice Joullian must simply be *aware* that renting Winnifred the room will promote or facilitate the act of prostitution.

The Natural and Probable Consequences Doctrine

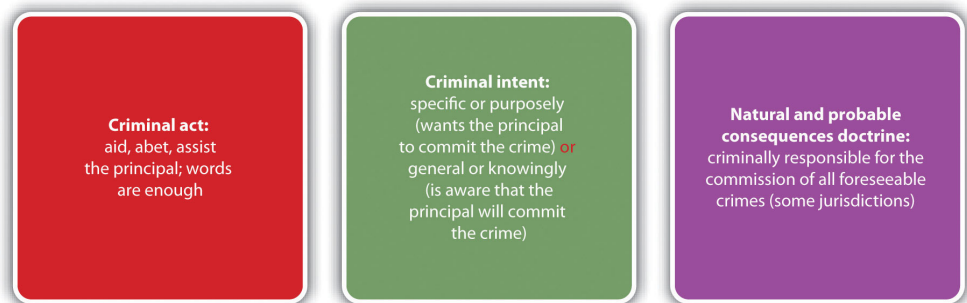
Accomplice liability should be imputed only to blameworthy, deserving defendants. However, in some jurisdictions, if the crime the defendant intentionally furthers is *related* to the crime the principal actually commits, the defendant is deemed an accomplice. As with legal causation, discussed in [Chapter 4 "The Elements of a Crime"](#), foreseeability is the standard. Under the **natural and probable consequences doctrine**⁸, if the defendant assists the principal with the intent to further a specific crime's commission, and the principal commits a *different* crime that is *foreseeable* at the time of the defendant's assistance, the defendant could be liable as an accomplice. ME Rev. Stat. Ann. tit. 17-A § 57 (3) (A), accessed December 21, 2010, <http://www.mainelegislature.org/legis/statutes/17-a/title17-Asec57.html>. Several jurisdictions have rejected this doctrine as an overly harsh extension of accomplice liability. *Bogdanov v. People*, 941 P.2d 247, 251 n. 8 (1997), accessed December 21, 2010, http://scholar.google.com/scholar_case?case=13910767150180460511&hl=en&as_sdt=2&as_vis=1&oi=scholarr#[8].

8. A doctrine that some jurisdictions follow holding an accomplice criminally responsible for all crimes the principal commits that are foreseeable when the accomplice assists the principal.

Example of the Natural and Probable Consequences Doctrine

José shows up drunk and unruly at his friend Abel's house and tells Abel he wants to "beat the hell" out of his girlfriend Maria. José asks Abel to drive him to Maria's house, and Abel promptly agrees. Abel drives José to Maria's house and waits in the car with the engine running. José forces his way into Maria's house and then beats and thereafter rapes her. If José and Abel are in a jurisdiction that recognizes the natural and probable consequences doctrine, the trier of fact could find that Abel is an accomplice to the battery, burglary, and rape of Maria. Abel appears to have the criminal intent required to be an accomplice to **battery** because he assisted José in his quest to *beat* Maria. If burglary and rape were *foreseeable* when Abel drove a drunk and angry José to Maria's house, the natural and probable consequences doctrine would extend Abel's accomplice liability to these crimes. If Abel is not in a natural and probable consequences jurisdiction, the trier of fact must separately determine that Abel had the criminal intent required to be an accomplice to *battery*, *burglary*, and *rape*; Abel's intent will be ascertained according to the jurisdiction's accomplice intent requirement—either **specific intent** or **purposely** or **general intent** or **knowingly**.

Figure 7.1 Diagram of Accomplice Liability



Consequences of Accomplice Liability

An accomplice is criminally responsible for the crime(s) the **principal** commits. Although the *sentencing* may vary based on a defendant-accomplice's criminal record or other extenuating circumstances related to sentencing, such as prior strikes, in theory, the accomplice is liable to the *same* degree as the principal. So if accomplice liability is established in the examples given in [Section 7.1.2 "Accomplice Elements"](#); Phoebe is criminally responsible for battery and child endangerment, Joulilian is criminally responsible for prostitution, and Abel is criminally responsible for battery and possibly burglary and rape. The **principal** should *also* be criminally responsible for his or her own actions. However, occasionally a situation arises where the principal is *not prosecuted* or *acquitted*

because of a procedural technicality, evidentiary problems, or a plea bargain, as is discussed in Section 7 "Prosecution of an Accomplice When the Principal Is Not Prosecuted or Is Acquitted".

Prosecution of an Accomplice When the Principal Is Not Prosecuted or Is Acquitted

Although accomplice liability is derivative, in many jurisdictions the trier of fact can determine that a defendant is an accomplice even if the criminal actor or principal is not prosecuted or has been tried and acquitted for the offense. *Standefer v. U.S.*, 447 U.S. 10 (1980), accessed December 22, 2010, http://scholar.google.com/scholar_case?case=11715693283858901517&hl=en&as_sdt=2&as_vis=1&oi=scholar. Thus a defendant can be liable for a crime even though he or she *did not* commit it and the defendant who *did* was spared prosecution or found *not guilty*. While this situation appears anomalous, if a defendant helps another commit a crime with the intent to further the crime's commission, punishment for the completed crime is appropriate. As the Model Penal Code states, "[a]n accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense...or has been acquitted" (Model Penal Code § 2.06(7)).

Example of Prosecution of an Accomplice When the Principal Is Not Prosecuted

Review the example in Section 7 "Example of the Natural and Probable Consequences Doctrine" with José and Abel. Assume that after José burglarizes, beats, and rapes Maria, local police arrest José and Abel. The police transport José and Abel to the police station and take them to separate rooms for interrogation. The police officer who interrogates José is a rookie and forgets to read José his Miranda rights. Thereafter, the police contact Maria, but she refuses to cooperate with the investigation because she fears reprisal from José. The district attorney decides not to prosecute José because of the tainted interrogation. In this case, Abel could *still be prosecuted* for battery and possibly rape and burglary as an accomplice in some jurisdictions. Although José is the **principal** and actually committed the crimes, it is not necessary for José to suffer the same criminal prosecution and punishment as Abel. If the elements required for accomplice liability are present, Abel can be fully responsible for the crimes *committed by José*, whether or not José is prosecuted for or convicted of these offenses.

Garrido Sentencing Video

Attorney: Nancy Garrido in Tears during Sentencing

Phillip Garrido, with his wife Nancy's help, kidnapped Jaycee Dugard, an eleven-year-old girl, and held her captive for eighteen years. During that time, Dugard was repeatedly raped, became pregnant twice, and gave birth to two children. Phillip Garrido pleaded guilty to multiple charges of rape and kidnapping and received a sentence of four hundred years to life in prison. Nancy was prosecuted as an accomplice, pleaded guilty and received a sentence of thirty-six years to life in prison. Michael Martinez, "Phillip, Nancy Garrido sentenced in Jaycee Dugard Kidnapping," CNN website, accessed August 15, 2011, http://articles.cnn.com/2011-06-02/justice/california.garridos.sentencing_1_jaycee-dugard-terry-probyn-phillip-garrido?s=PM:CRIME. Nancy Garrido's attorney discusses her sentencing as an **accomplice** in this video:

[\(click to see video\)](#)

Ghailani Verdict Video

Ghailani Guilty of One Count

Ahmed Ghailani, an alleged terrorist, was transferred from a military prison in Guantanamo Bay and tried as a civilian in a federal district court in New York. Ghailani was indicted for **accomplice liability** and conspiracy for the deaths of hundreds of citizens killed during Al Qaeda bombings of US embassies in Nairobi, Kenya, and Tanzania. At trial, the prosecution failed to convince the jury that Ghailani had the *criminal intent* required for accomplice liability. He was acquitted of the murders and attempted murders as an accomplice and convicted of one conspiracy charge. However, he received a sentence of life in prison without the possibility of parole for the conspiracy charge, the same sentence he would have received if convicted of all the murder and attempted murder charges. Benjamin Weiser, "Ex-Detainee Gets Life Sentence in Embassy Blasts," *New York Times* website, accessed January 26, 2011, <http://www.nytimes.com/2011/01/26/nyregion/26ghailani.html>. A news story on the conviction of Ghailani is shown in this video:

[\(click to see video\)](#)

KEY TAKEAWAYS

- The four parties to crime at early common law were principals in the first degree, principals in the second degree, accessories before the fact, and accessories after the fact. These designations signified the following:
 - Principals in the first degree committed the crime.
 - Principals in the second degree were present at the crime scene and assisted in the crime's commission.
 - Accessories before the fact were not present at the crime scene, but assisted in preparing for the crime's commission.
 - Accessories after the fact helped a party to the crime avoid detection and escape prosecution or conviction.
- In modern times, the parties to crime are principals and their accomplices, and accessories.
- The criminal act element required for accomplice liability is aiding, abetting, or assisting in the commission of a crime. In many jurisdictions, words are enough to constitute the accomplice criminal act element, while mere presence at the scene without a legal duty to act is not enough.
- The criminal intent element required for accomplice liability is either specific intent or purposely or general intent or knowingly.
- The natural and probable consequences doctrine holds an accomplice criminally responsible if the crime the principal commits is foreseeable when the accomplice assists the principal.
- The consequences of accomplice liability are that the accomplice is criminally responsible for the crimes the principal commits.
- In many jurisdictions, an accomplice can be prosecuted for an offense even if the principal is not prosecuted or is tried and acquitted.

EXERCISES

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

1. Justin asks his girlfriend Penelope, a bank teller, to let him know what time the security guard takes his lunch break so that he can successfully rob the bank. Penelope tells Justin the security guard takes his break at 1:00. The next day, which is Penelope's day off, Justin successfully robs the bank at 1:15. Has Penelope committed robbery? Why or why not?
2. Read *State v. Ulvinen*, 313 N.W.2d 425 (1981). In *Ulvinen*, the defendant sat guard and then helped her son clean up and dispose of evidence after he strangled and dismembered his wife. Thereafter, the defendant was convicted of murder as an accomplice. The defendant was asleep when the killing occurred, but before the killing her son told her that he planned to kill the victim. The defendant reacted with passive acquiescence by demurring and expressing disbelief that he would go through with his plans. Did the Supreme Court of Minnesota uphold the defendant's murder conviction? The case is available at this link: http://scholar.google.com/scholar_case?case=5558442148317816782&hl=en&as_sdt=2&as_vis=1&oi=scholarr.
3. Read *Joubert v. State*, 235 SW 3d 729 (2007). In *Joubert*, the defendant was convicted and sentenced to death based on his participation in an armed robbery that resulted in the death of a police officer and employee. The jury convicted the defendant after hearing testimony from his accomplice and reviewing a video of the defendant confessing to the offense. The defendant appealed the conviction because in Texas, accomplice testimony must be corroborated by other evidence, and the defendant claimed that the other corroborating evidence was lacking in this case. Did the Court of Criminal Appeals of Texas uphold the defendant's conviction? Why or why not? The case is available at this link: http://scholar.google.com/scholar_case?case=10119211983865864217&hl=en&as_sdt=2&as_vis=1&oi=scholarr.

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 liability⁹, a concept discussed in Chapter 4 "The Elements of a Crime", 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 "Introduction to Criminal Law", vicarious liability in criminal law is common between employers and employees. It is also the basis of **corporate liability**¹⁰, which is discussed in Section 7.2.1 "Corporate Liability".

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.

9. The transfer of a defendant's liability based upon a special relationship.

10. The vicarious liability of a corporation.

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.

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*



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.

KEY TAKEAWAYS

- 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.

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=scholarr.
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: <http://www.jud.ct.gov/ji/criminal/part3/3.1-4.htm>.

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, http://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.

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**¹¹, 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-htm/>.

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.

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.

11. A defendant who helps a principal escape or avoid arrest, prosecution for, or conviction of a crime.

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, <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=13&Chapter=001>.

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.

Figure 7.3 Crack the Code

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*...

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>.

Example of Accessory Intent

Review the example with Jim and James given in [Section 7 "Example of Accessory Act"](#). 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.

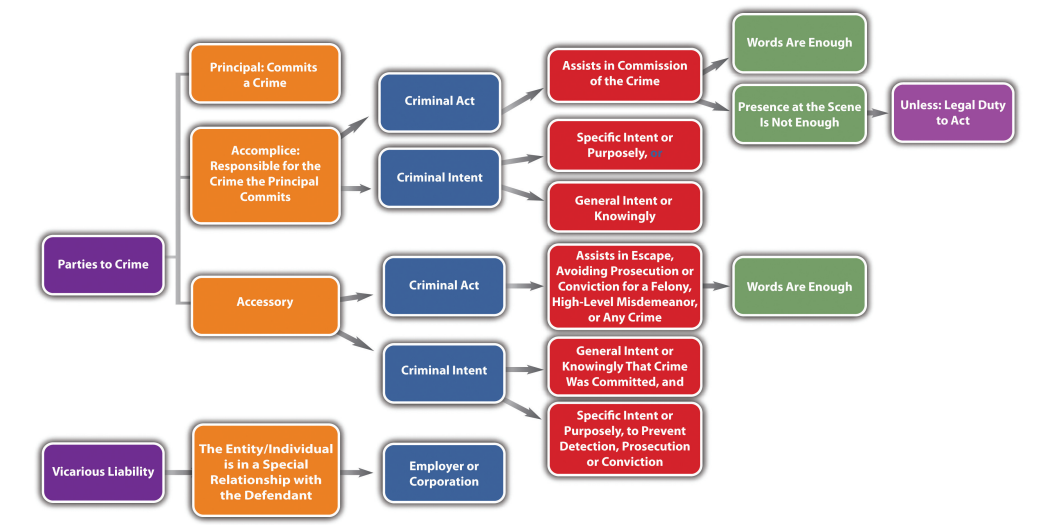
Accessory Grading

As stated in Section 7.3 "Accessory", 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-htm/>. although in some jurisdictions it is graded as a felony. Idaho Code Ann. § 18-206, accessed January 9, 2011, <http://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



KEY TAKEAWAYS

- 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.

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.

7.4 End-of-Chapter Material

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.

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.
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>.

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.
- *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.
- *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.

Articles of Interest

- Spectator liability in gang rape: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664162
- Corporate criminal liability: <http://www.pointoflaw.com/feature/archives/2009/07/corporate-criminal-liability-s.php>
- Criminal vicarious liability in general: http://www.experiencefestival.com/a/Vicarious_liability_criminal/id/1994611

Website of Interest

- White collar crime blog site: http://lawprofessors.typepad.com/whitecollarcrime_blog/2009/12/recent-articles.html

Statistics of Interest

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

Answers to Exercises

From Section 7.1 "Parties to Crime"

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.

Answers to Exercises

From Section 7.2 "Vicarious Liability"

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.

Answers to Exercises

From Section 7.3 "Accessory"

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.

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.

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**.