

CHAPTER SIX: PARTIES TO CRIME AND VICARIOUS LIABILITY

INTRODUCTION

A criminal charge of aiding and abetting or accessory can usually be brought against anyone who helps in the commission of a crime, though legal distinctions vary by state. A person charged with aiding and abetting or accessory is usually not present when the crime itself is committed, but he or she has knowledge of the crime before or after the fact, and may assist in its commission through advice, actions, or financial support.

In Illinois, a person who intentionally aids or advises another in committing a crime may be guilty of aiding and abetting, and may be criminally liable for the acts of the other person, as well. Thus, if someone intentionally advises another how to commit robbery and lends the robber a car to use in the getaway, both people are equally liable under the law.

Under Illinois law, “a claim for aiding and abetting includes the following elements: (1) the party whom the defendant aids must perform a wrongful act which causes an injury; (2) the defendant must be regularly aware of his role as part of the overall or tortuous activity at the time he provides assistance; (3) the defendant must knowingly and substantially assist the principal violation.”

ILLINOIS LAW ON PARTIES TO CRIME

(720) Criminal Code of 1961

Article 5. Parties to Crime

(720 ILCS 5/5-1) (from Ch. 38, par. 5-1)

Sec. 5-1. Accountability for conduct of another.

A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself, or that of another and he is legally accountable for such conduct as provided in Section 5--2, or both.

(Source: Laws 1961, p. 1983.)

(720 ILCS 5/5-2) (from Ch. 38, par. 5-2)

Sec. 5-2. When accountability exists.

A person is legally accountable for the conduct of another when:

(a) Having a mental state described by the statute defining the offense, he causes another to perform the conduct, and the other person in fact or by reason of legal incapacity lacks such a mental state; or

(b) The statute defining the offense makes him so accountable; or

(c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable, unless the statute defining the offense provides otherwise, if:

(1) He is a victim of the offense committed; or

(2) The offense is so defined that his conduct was inevitably incident to its commission; or

(3) Before the commission of the offense, he terminates his effort to promote or facilitate such commission, and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

(Source: Laws 1961, p. 1983.)

(720 ILCS 5/5-3) (from Ch. 38, par. 5-3)

Sec. 5-3. Separate conviction of person accountable.

A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable, although the other 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 is not amenable to justice, or has been acquitted.

(Source: Laws 1961, p. 1983.)

CASE STUDY

***People v. O'Neil* 550 N.E.2d 1090** Individual defendants appealed from a judgment of the Circuit Court of Cook County (Illinois), which convicted them of murder in the death of an employee, from cyanide poisoning stemming from conditions in the corporate defendants' plant. Corporate defendants were convicted of involuntary manslaughter in the same death.

OVERVIEW: On appeal, defendants urged that the judgments rendered were inconsistent. The court concluded that the judgments rendered were legally inconsistent. The court determined that there was not sufficient evidence to establish, separately, defendants' mental states to support separate offenses of murder and reckless conduct. Thus, the court could not conclude that the record supported a determination that the individual defendants possessed different mental states on February 10, 1983, as distinguished from the period of March 1982 to March 1983, such as might support separate offenses of murder and reckless conduct. Because the offenses of murder and reckless conduct require mutually exclusive mental states, and because the court concluded that the same evidence of the individual defendants' conduct was used to support both offenses and did not establish, separately, each of the requisite mental states, the court held that the convictions were legally inconsistent.

OUTCOME: Individual defendants' convictions for murder were reversed and remanded for a new trial.

ILLINOIS LAW ON VICARIOUS LIABILITY

Vicarious liability extends to corporations, traffic tickets, and parents.

In the criminal law, corporate liability determines the extent to which a corporation as a fictitious person can be liable for the acts and omissions of the natural persons it employs. It is sometimes regarded as an aspect of criminal vicarious liability, as distinct from the situation in which the

wording of a statutory offence specifically attaches liability to the corporation as the principal or joint principal with a human agent.

According to the Illinois Law Manual: "In a master/servant relationship, a principal can be held liable for the wrongful conduct of an agent if the conduct is committed within the scope of that relationship. This is known as the doctrine of *respondeat superior*. It most commonly arises in the context of an employer's liability for the negligent conduct of an employee. In limited circumstances, however, an employer may also be held vicariously liable for the intentional torts or other misconduct of an employee.

The principal's or master's liability is derived from his or her relationship to the agent, or servant. A master is one who has the right to control the manner and method of work performed. A servant is one whose work is subject to the supervision or control of the master. By contrast, an independent contractor is a person hired for a particular purpose or project, who is compensated on a project-by-project basis, and who exercises his own discretion over the manner and method of carrying out the work. Whether the agent is a "servant" or an "independent contractor" is nearly always a question of fact to be determined by a jury."

Under (720) Illinois (720) Criminal Code of 1961 Article 5. Parties to Crime:

Sec. 5-4. Responsibility of corporation. (a) A corporation may be prosecuted for the commission of an offense if, but only if:

(1) The offense is a misdemeanor, or is defined by Sections 11-20, 11-20.1 or 24-1 of this Code, or Section 44 of the "Environmental Protection Act", approved June 29, 1970, as amended or is defined by another statute which clearly indicates a legislative purpose to impose liability on a corporation; and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his or her office or employment and in behalf of the corporation, except that any limitation in the defining statute, concerning the corporation's accountability for certain agents or under certain circumstances, is applicable; or

(2) The commission of the offense is authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent who is acting within the scope of his or her employment in behalf of the corporation.

(b) A corporation's proof, by a preponderance of the evidence, that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense, is a defense to a prosecution for any offense to which Subsection (a) (1) refers, other than an offense for which absolute liability is imposed. This Subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this Subsection.

(c) For the purpose of this Section:

(1) "Agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation.

(2) "High managerial agent" means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

(Source: P.A. 85-1440.)

(720 ILCS 5/5-5) (from Ch. 38, par. 5-5)

Sec. 5-5. Accountability for conduct of corporation.

(a) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be

performed, to the same extent as if the conduct were performed in his own name or behalf.

(b) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense, although only a lesser or different punishment is authorized for the corporation.

(Source: Laws 1961, p. 1983.)

Traffic Tickets

Most parking statutes consider the owner of the vehicle *prima facie* responsible for paying the ticket. This means that unless you present evidence that you were not responsible, you are presumed liable for the ticket. In other words, the prosecutor is not required to present any evidence to establish your responsibility, you are presumed responsible unless you appear in court and establish that someone else was driving your car. Under municipal laws in Illinois, "the fact that an automobile which is illegally operated or parked is registered in the name of a person shall be considered prima facie proof that such person was in control of the automobile at the time of such violation."

Parental Liability

Parental liability is the term used to refer to a parent's obligation to pay for damage done by negligent, intentional, or criminal acts of that parent's child. In most states, parents are responsible for all malicious or willful property damage done by their children. Parental liability usually ends when the child reaches the age of majority and does not begin until the child reaches an age of between eight and ten.

In Illinois, it is illegal for a person to store or leave any loaded firearm in a way that allows a minor to gain access to the firearm without permission from a parent or guardian and use it to injure or kill. A firearm is properly stored if it is secured by a trigger lock, placed in a securely locked box, or placed in some other location that a reasonable person would believe to be secured from a minor.

CASE STUDIES

***Tatham v. Wabash R. Co.* 107 N.E.2d 735**

Shortly stated, the case made by the complaint, augmented by answers to interrogatories, is this: Plaintiff was employed by defendant as a supervising gang foreman in a locomotive-repair shop. While he was engaged in the performance of his duties, in interstate commerce, plaintiff ordered Davis, another employee who was assigned to work under plaintiff, to remove a portion of the lagging from the boiler of an engine. Davis refused. Plaintiff went in search of the shop superintendent but was unable to find him. On his return, plaintiff was severely beaten by Davis without provocation or warning. Davis was a vicious, contentious, pugnacious and ill-tempered person who was quarrelsome and frequently engaged in physical combats, and when defendant employed Davis it knew of these characteristics and knew that they created an unreasonable danger to the plaintiff and other employees.

The complaint contains a charge of negligence based upon *respondeat superior*. As to that charge we agree with the Appellate Court that the complaint and plaintiff's admissions show that the assault was not within the scope of Davis's employment. The liability about which the dispute here centers is not vicarious -- except as all corporate liability may be said to be vicarious. The

plaintiff grounds his right to recover directly upon the negligence of the principal, and not upon wrongful conduct of the agent or servant which, by the doctrine of *respondeat superior*, is imputed to the principal. The charge, a familiar one to the law, is that the defendant knowingly employed a dangerous man to work with plaintiff, and that it thereby created the hazard which resulted in harm to the plaintiff. As the Restatement of Agency puts it, "An agent, although competent otherwise, may be incompetent because of his reckless or vicious disposition, and if a principal, without exercising due care in selection, employs a vicious person to do an act which necessarily brings him in contact with others while in the performance of a duty, he is subject to liability for harm caused by the vicious propensity." (Section 213, pp. 465-466.) And the Restatement spells out the distinction between this direct liability and liability "based upon any rule of the law of principal and agent or of master and servant."

***Lott v. Strang* 727 N.E.2d 407**

In September 1996, William was driving eastward on Route 16 in Jersey County. At the same time, Jean Lott and her son, Kyle, were traveling west on Route 16. William's car crossed the centerline and collided head-on with the Lotts' vehicle. As a result, William died, and Jean and Kyle were injured. The Lotts allege that William was intoxicated when the accident occurred.

In September 1998, the Lotts filed a multicount complaint against William's estate, Wayne, and Bonnie. In counts IV through VI of their complaint, the Lotts alleged that (1) Wayne and Bonnie had a duty to supervise William so as to prevent him from doing harm to others, and (2) they breached that duty. Specifically, the Lotts alleged that Wayne and Bonnie knew that William had previously been at fault in an automobile accident in which he struck a Jersey County deputy sheriff, and yet they failed to take appropriate steps to prevent William from again harming others. In April 1999, they amended counts IV through VI to add that Wayne and Bonnie had the opportunity to control William by (1) taking away his car keys, (2) taking away his driving privileges, and (3) not letting him drive unless they were with him to supervise.

QUESTIONS FOR REVIEW

1. True or False? In Illinois, a person who intentionally aids or advises another in committing a crime may be guilty of aiding and abetting, and may be criminally liable for the acts of the other person, as well.

Answer: True

2. Which of the following is not an element of aiding and abetting?

- A. The party whom the defendant aids must perform a wrongful act which causes an injury
- B. The defendant must be regularly aware of his role as part of the overall or tortuous activity at the time he provides assistance
- C. The defendant must knowingly and substantially assist the principal violation
- D. The defendant must purposely and deliberately assist the principal violation

3. Which of the following does vicarious liability extend?

- A. Parents
- B. Corporations
- C. Children
- D. Traffic tickets

Answer: C

4. True or False? In most states, parents are not responsible for all malicious or willful property damage done by their children.

Answer: False

5. True or False? If someone intentionally advises another how to commit robbery and lends the robber a car to use in the getaway, both people are equally liable under the law.

Answer: True

WEB RESOURCES

- <http://criminal.findlaw.com>
- http://www.abanet.org/rppt/meetings_cle/spring2004/rp/realestatelawyersssued/schreck.pdf
- <http://law.enotes.com/everyday-law-encyclopedia/>
- http://en.wikipedia.org/wiki/Corporate_liability
- <http://www.querrey.com/research/lawmanual/8A%20Master%20Servant.pdf>