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Agency -- Criminal Liability of Corporation -- Imputation of Agents' Knowledge

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NOTES AND COMMENTS

Agency—Criminal Liability of Corporation—Imputation of Agents' Knowledge

Defendant trucking corporation was convicted of knowingly and willfully keeping false driver's logs in violation of a federal statute. The evidence indicated wide discrepancies between the false logs and the trip reports, both of which records were prepared by defendant's driver.[1] No single agent of the corporation other than the driver knew of these discrepancies, but one agent had knowledge of the information in the logs, and another knew the contents of the trip reports. Although reversing the conviction on other grounds, the court of appeals ruled that the partial information possessed by both agents could be attributed to the corporation to give it knowledge of the falsity of the logs.[2]

It was once held that a corporation could not commit a crime,[3] but now corporate bodies can be convicted for acts of misfeasance,[4] violations of statutes,[5] and crimes involving general and specific criminal intent,[6] although some writers have criticized the last extension of criminal responsibility.[7] Because a corporation can act only through its agents or employees, rules of agency have been used in varying degree to attribute the *mens rea* or guilty knowledge to the corporation in crimes involving intent.[8] Generally, a sweeping application of the doctrine of *respondeat*

[1] Whether the driver in falsifying the logs was attempting to further the interests of his employer or to perpetrate a scheme to defraud them was not indicated by the facts or discussed in the opinion.

[2] Inland Freight Lines v. United States, 191 F. 2d 313 (10th Cir. 1951).

[3] McDaniel v. Gates City Gas Light Co., 79 Ga. 58, 61 (1887); State v. Great Works Milling & Mfg. Co., 20 Me. 41 (1841); Anonymous, 12 Mod. 559, 88 Eng. Rep. 1518 (K. B. 1701).

[4] *E.g.*, Stewart v. Waterloo Turn Verein, 71 Iowa 226, 32 N. W. 275 (1887); State v. Western North Carolina R. R., 95 N. C. 602 (1886).

[5] *E.g.*, Groff v. State, 171 Ind. 547, 85 N. E. 769 (1908); Commonwealth v. Sacks, 214 Mass. 72, 100 N. E. 1019 (1913).

[6] *E.g.*, Joplin Mercantile Co. v. United States, 213 Fed. 926 (8th Cir. 1914), *aff'd*, 236 U. S. 531 (1915) (conspiracy to bring liquor into Indian territory); Telegram Newspaper Co. v. Commonwealth, 172 Mass. 294, 52 N. E. 445 (1899) (criminal contempt); State v. Lehigh Valley R. R., 90 N. J. L. 372, 103 Atl. 695 (1917), *aff'd*, 94 N. J. L. 171, 111 Atl. 257 (1920) (manslaughter); People v. Canadian Fur Trappers Corp., 248 N. Y. 159, 161 N. E. 455 (1928) (larceny); State v. Salisbury Ice & Fuel Co., 166 N. C. 366, 81 S. E. 737 (1914) (false pretenses); State v. Rowland Lumber Co., 153 N. C. 610, 69 S. E. 58 (1910) (willful destruction of property). *See* Hildebrand, *Corporate Liability for Torts and Crimes*, 13 TEXAS L. REV. 253, 272 (1935).

[7] BALLENTINE, CORPORATIONS §114 (Rev. ed. 1946); Francis, *Criminal Responsibility of the Corporation*, 18 ILL. L. REV. 305 (1924); Canfield, *Corporate Responsibility for Crime*, 14 COL. L. REV. 469 (1914).

[8] *See* New York Central & H. R. R. R. v. United States, 212 U. S. 481 (1909); Mininsohn v. United States, 101 F. 2d 477 (3d Cir. 1939); Overland Cotton Mill Co. v. People, 32 Colo. 263, 75 Pac. 924 (1904); State v. Salisbury Ice & Fuel Co., 166 N. C. 366, 81 S. E. 737 (1914).

superior has been withheld.[9] Courts will impute to the corporation the knowledge and intent of its officers,[10] and, in some cases, that of its superior agents acting within the scope of their employment;[11] but they generally do not impute the intent of an ordinary employee unless his superior had knowledge of such intent[12] or acquiesced in it.[13] Lack of consent is a defense in almost all cases.[14]

There has been a growing tendency, however, to broaden the area of corporate criminal liability, and to hold the company for deeds which were done by any of its agents acting within the scope of their employment,[15] especially in cases where the public welfare is involved.[16] It is said that public necessity requires that the corporation have a non-delegable duty to prevent violations of the law by its agents.[17] Conse-

[9] People v. Jarvis, 135 Cal. App. 288, 27 P. 2d 77 (1933), *cert. denied*, 291 U. S. 648 (1934); Commonwealth v. Stevens, 153 Mass. 421, 26 N. E. 992 (1891); People v. Raphael, 190 Misc. 584, 72 N. Y. S. 2d 748 (N. Y. City Ct. 1947). This restraint on the part of the courts comes from the feeling that ". . . it is of the very essence of our deep-rooted notions of criminal liability that guilt be personal and individual. . . ." Sayre, *Criminal Responsibility for the Acts of Another*, 43 HARV. L. REV. 689, 717 (1930).

[10] United States v. Empire Packing Co., 174 F. 2d 16 (7th Cir. 1949); Mininsohn v. United States, 101 F. 2d 477 (3d Cir. 1939).

[11] United States v. Armour & Co., 168 F. 2d 342 (3d Cir. 1948); C. I. T. Corp. v. United States, 150 F. 2d 85 (9th Cir. 1945). "The federal courts seem to emphasize the relative position of the agent in the fact pattern without regard to his rank in the corporate hierarchy." Gallin, *Corporate Criminal Liability*, 4 LAW AND L. N. 3, 5 (fall, 1950).

[12] People v. Raphael, 190 Misc. 584, 72 N. Y. S. 2d 748 (N. Y. City Ct. 1947). The courts, however, will often readily infer such knowledge from the general circumstances of the case. *E.g.*, Paschen v. United States, 70 F. 2d 491, 503 (7th Cir. 1934); Zito v. United States, 64 F. 2d 772 (7th Cir. 1933); United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); United States v. Houghton, 14 Fed. 544 (D. N. J. 1882).

[13] Grant Bros. Const. Co. v. United States, 13 Ariz. 388, 144 Pac. 955 (1911), *aff'd*, 232 U. S. 647 (1913); 19 C. J. S. 1075 (1940).

[14] Holland Furnace Co. v. United States, 158 F. 2d 2 (2d Cir. 1946); John Gund Brewing Co. v. United States, 204 Fed. 17 (8th Cir. 1913). But orders forbidding such acts must have been given in good faith, United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); THOMPSON, LAW OF CORPORATIONS §5645 (3d ed. 1927).

[15] United States v. Parfait Powder Puff Co., 163 F. 2d 1008 (7th Cir. 1947); United States v. George Fish, Inc., 154 F. 2d 798 (2d Cir.), *cert. denied*, 328 U. S. 869 (1946); Egan v. United States, 13 F. 2d 369 (8th Cir.), *cert. denied*, 320 U. S. 788 (1943); Regan v. Kroger Groccry and Baking Co., 386 Ill. 284, 54 N. E. 2d 210 (1944); State v. Louisville and N. R. R., 91 Tenn. 445, 19 S. W. 229 (1892); Vulcan Last Co. v. State, 194 Wis. 636, 217 N. W. 412 (1928). This approach is urged in Edgerton, *Corporate Criminal Responsibility*, 36 YALE L. J. 827, 835 (1927.)

[16] "Within this field the machinery of criminal administration is utilized as an enforcing agency because the social interest far outweighs the individual's interest." Note, 60 HARV. L. REV. 283, 285 (1946). *See* Dotterweich v. United States, 320 U. S. 277 (1943); Zito v. United States, 64 F. 2d 772 (7th Cir. 1933); Golden Guernsey Farms, Inc. v. State, 223 Ind. 606, 63 N. E. 2d 699 (1945).

[17] Actually, the non-delegable duty concept seems to create a type of absolute liability closely akin to that imposed by the "dangerous instrumentality" rule in agency cases in the tort field. *Compare* United States v. Illinois Central R. R., 303 U. S. 239 (1938); United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); People v. Sheffield Farms-Slawson-Decker Co., 225 N. Y. 25, 121 N. E. 474 (1918),

quently, companies have been convicted where their agents acted without the knowledge[18] or, in a few cases, consent[19] of their superiors, and even against express orders and instructions.[20] In a few instances it has been ruled that criminal liability can be imposed even when the agent has deliberately acted adversely to the interests of the principal.[21]

Into this confused area of law, the instant case[22] injects a new fiction: where knowledge is an ingredient of the crime, it can be found by imputing the sum total of the bits of information possessed by several agents to the "mind" of the corporation, and if such information, by fiction of the law integrated by the "corporate mind," gives notice of the criminal act of an agent, the corporation has the necessary guilty knowledge.

This theory is completely new to the field of criminal law. It is unsupported by the language of *New York Central & H. R. R. R. v. United States,*[23] cited by the court to support the present decision. In that case, the imputation of *partial* [italics added] knowledge was never considered, the court merely holding the defendant railroad responsible for the knowledge of two of its agents where both agents had complete knowledge of the crime.

Examples of the use of the "corporate mind" fiction do appear, however, in some civil cases. In *United States v. National Exchange Bank,*[24] the knowledge of a disbursing clerk as to the amount of a check drawn by him was imputed to his principal and when the check (which had been raised afterwards by a third party) was paid by a different agent, the claim by the principal of payment under a mistake of fact was denied, the court holding that the drawer and drawee were the same.[25] There have been similar holdings,[26] based upon the legal iden-

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with Richman Brothers Co. v. Miller, 131 Ohio St. 424, 3 N. E. 2d 360 (1936) (tort case).

[18] Commonwealth v. Jackson, 146 Pa. Super. 328, 22 A. 2d 299 (1941), *aff'd,* 345 Pa. 456, 28 A. 2d 894 (1942). But see Comment, 95 U. OF PA. L. REV. 557 (1947).

[19] Regan v. Kroger Grocery and Baking Co., 386 Ill. 284, 54 N. E. 2d 210 (1944).

[20] United States v. Armour & Co., 168 F. 2d 342 (3d Cir. 1948); Overland Cotton Mill Co. v. People, 32 Colo. 263, 75 Pac. 924 (1904); State Bank v. Potosi Tie and Lumber Co., 299 Ill. App. 524, 20 N. E. 2d 893 (1939).

[21] Old Monastery Co. v. United States, 147 F. 2d 905 (4th Cir.), *cert. denied,* 326 U. S. 734 (1945); *accord,* United States v. Empire Packing Co., 174 F. 2d 16 (7th Cir. 1949). But see 13 AM. JUR. §1113 (1938).

[22] Inland Freight Lines v. United States, 191 F. 2d 313 (10th Cir. 1951).

[23] 212 U. S. 481 (1909).

[24] 270 U. S. 527 (1926).

[25] *Id.* at 534.

[26] Northwestern Nat. Bank v. Madison and Kedzie State Bank, 242 Ill. App. 22 (1926); German-American National Bank v. Kelley, 183 Iowa 269, 166 N. W. 1053 (1918); New England Trust Co. v. Bright, 274 Mass. 407, 17 N. E. 469 (1931); Neal v. Cincinnati Union Stockyards Co., 1 O. C. C. (N. S.) 13 (1903); London County Freehold and Leasehold Properties, Ltd. v. Berkeley Property and Investment Co., 2 All E. R. 1039 (1936).

tity of principal and agent,[27] but the theory has been sharply criticized as one which adds innocent knowledge to innocent knowledge to get guilty knowledge.[28] As a result, most of the courts that espouse this approach do so with reservations, stating that before it will be imputed, the information must be obtained by the agent acting within the scope of his employment,[29] that the agent must be involved in the transaction in connection with which the information is to be imputed,[30] that the information must appear important to the agent in regard to his duties,[31] or that the agent must have reason to believe the information should be reported or a duty to report it.[32] Some decisions reject the "corporate mind" fiction entirely, and impute partial knowledge of an agent only to create estoppel against a principal seeking to obtain the benefits of a transaction which he has consummated in whole or in part by means of such agent.[33]

The conflict and complications which have been created by the use of the "corporate mind" approach in civil cases would indicate that its importation into criminal law is not advisable. If it is deemed beneficial to broaden the criminal liability of corporations, a point of policy on which there is considerable doubt,[34] it would appear wiser to achieve this end by increased application of the "non-delegable" duty concept, with its standard of absolute liability for acts of an agent, than to follow the circuitous route of conjuring up knowledge in the "mind" of the corporation, when it is clear that in actuality no such knowledge and no such "mind" exist.

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[27] For an explanation of the rule and the policies upon which it is based, *see* Neal v. Cincinnati Union Stockyards Co., *supra* note 25.

[28] Devlin, *Fraudulent Misrepresentation: Division of Responsibility between Principal and Agent,* 53 L. Q. REV. 344, 362 (1937); Comment, 15 CAN. B. REV. 716 (1937).

[29] Solow v. General Motors Truck Co., 64 F. 2d 105 (2d Cir. 1933).

[30] Congar v. Chicago & N. W. R. R., 24 Wis. 157 (1869).

[31] RESTATEMENT, AGENCY, §275, comment *d* (1934).

[32] Elgin, J. & E. R. R. v. United States, 253 Fed. 907 (7th Cir. 1918).

[33] Peebles v. Patapsco Guano Co., 77 N. C. 233 (1877); Irvine v. Grady, 85 Tex. 120, 19 S. W. 1028 (1892).

[34] Punishment of the corporation itself by fine would not seem to be particularly effective in deterring an employee from committing criminal acts (especially in cases where the employee is deliberately acting adversely to the interests of his employer) unless the threat of fine causes the company to exercise stricter control over its employee. In addition, the reason for a broad application of *respondeat superior* in the tort field, *i.e.,* the need to compensate an innocent third party for his losses, does not exist in the area of criminal responsibility. After all, any fine levied on the corporation is ultimately passed on to its stockholders in the form of lower profits or to the public in the form of higher prices. For further discussion of this point, see BALLANTINE, CORPORATIONS §114 (Rev. ed. 1946); Edgerton, *supra* note 15; Francis, *supra* note 7, at 322; Sayre, *supra* note 9, at 717.