

CHAPTER 15 CORPORATIONS AND ASSOCIATIONS

1. Corporations and Associations

Whether corporations or associations may be prosecuted as defendants in a criminal court depends on the language or intent of the statute alleged to be violated. Sec. 7.22, P.C. The leading case on the subject of criminal liability of corporations is *Vaughan & Sons v. State*, 737 S.W.2d 805 (Tex. Crim. App. 1987). Reversing the court of appeals, the Court of Criminal Appeals in *Vaughan* held that a corporation could commit the crime of criminally negligent homicide. Because of the complexities that accompany the prosecution of a corporation or association, it is more common to see prosecutors opt to pursue criminal charges against individual employees or association officers. In such cases, Texas law provides individual criminal liability for acts committed on behalf of a corporation or association. Sec. 7.23, P.C. See *Sabine Consol. Inc. v. State*, 816 S.W.2d 784 (Tex. App.—Austin 1991). Such prosecutions may be in addition to any administrative penalty imposed against the corporation. *Ex parte Canady*, 140 S.W.3d 845 (Tex. App.—Houston [14th Dist.] 2004).

Checklist 15-1

Script/Notes

Definitions:

“Agent” means a director, officer, employee, or other person authorized to act on behalf of a corporation, an association, a limited liability company, or another business entity.

“Association” means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

“High managerial agent” means:

an officer of a corporation or association;

a partner in a partnership; or

an agent of a corporation or association who has duties of such responsibility that his or her conduct may reasonably be assumed to represent the policy of the corporation or association.

“Person,” means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

1. Summoning corporation or association:

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Art. 17A.03, C.C.P.

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| <ul style="list-style-type: none"> <input type="checkbox"/> a. The court must summons the corporation or association. The summons is in the same form as a <i>capias</i>. A certified copy of the complaint must accompany the summons. <input type="checkbox"/> b. The corporation or association has until 10:00 a.m. on the Monday after the 20th day after service to answer. <input type="checkbox"/> c. Service must be by a peace officer on the registered agent or a high managerial agent. <input type="checkbox"/> d. No individual may be arrested upon a complaint filed against a corporation or association. | <p>Art. 17A.03 (a)(1-2), C.C.P See <i>TMCEC 2022 Forms Book: Corporate Summons</i>.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 2. Appearance: <ul style="list-style-type: none"> <input type="checkbox"/> a. The corporation or association must appear through counsel. <ul style="list-style-type: none"> <input type="checkbox"/> (1) Appearance is for the purpose of entering a plea. <input type="checkbox"/> (2) Ten full days must elapse after the day of appearance before the corporation may be tried. <input type="checkbox"/> b. If a corporation or association does not appear in response to a summons, or appears but fails or refuses to plead: <ul style="list-style-type: none"> <input type="checkbox"/> (1) It is deemed to be present in person for all purposes; <input type="checkbox"/> (2) The court shall enter a plea of not guilty on its behalf; and | <p>Art. 17A.03 (a)(3), C.C.P.</p> <p>Arts. 17A.04 and 17A.05, C.C.P.</p> <p>Art. 17A.03(b), C.C.P.</p> <p>Arts. 17A.07(a) and 17A.06, C.C.P</p> <p>.</p> <p>Art. 17A.07(b), C.C.P.</p> |

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| <ul style="list-style-type: none"> <input type="checkbox"/> (3) In other statutes where strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations, associations, limited liability companies, or other business entities plainly appears. | <p>Sec. 7.22(a)(3), P.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. It is an affirmative defense to prosecution of a corporation, an association, a limited liability company, or another business entity under Section 7.22(a)(1) or (a)(2) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. | <p>Sec. 7.24, P.C.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 4. Punishments upon finding or plea of guilty: <ul style="list-style-type: none"> <input type="checkbox"/> a. Court may sentence the corporation, association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense. <input type="checkbox"/> b. If an offense provides no specific penalty, the offense is classified as a Class C misdemeanor and the fine is not to exceed \$2,000. <input type="checkbox"/> c. In addition to any sentence, the court may order a corporation, an association, a limited liability company, or another business entity to give notice of the conviction to any person the court deems appropriate. <input type="checkbox"/> d. The clerk must notify the Attorney General's Office. <ul style="list-style-type: none"> <input type="checkbox"/> (1) If a defendant is a corporation, or a high managerial agent, notice is given when the conviction becomes final and unappealable. <input type="checkbox"/> (2) The notice of conviction of a corporation or high managerial agent shall include: | <p>Art. 17A.09, C.C.P.</p> <p>Sec. 12.51(a), P.C.</p> <p>Sec. 12.51(b), P.C.</p> <p>Sec. 12.51(d), P.C.</p> <p>Sec. 12.51(e), P.C.</p> <p>Art. 17A.09, C.C.P.</p> |

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| <ul style="list-style-type: none"> <input type="checkbox"/> (A) The corporation’s name, the registered agent(s), and the address of the registered office, or the high managerial agent’s name and address, or both. <input type="checkbox"/> (B) Certified copies of the judgment, sentence, and complaint on which the judgment and sentence were based. | <p>Art. 17A.08, C.C.P. This may be construed to include deferred disposition.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> e. The benefits of adult probation laws shall not be available to corporations or associations. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. Enforcement of judgment: | |
| <ul style="list-style-type: none"> <input type="checkbox"/> a. No individual may be arrested upon judgment or sentence entered against a corporation or association. | <p>Art. 17A.03(b), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> b. When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged after: <ul style="list-style-type: none"> <input type="checkbox"/> (1) The amount has been fully paid; <input type="checkbox"/> (2) The execution has been fully satisfied; or | <p>Sec. 43.01, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> (3) The judgment has been satisfied in any other manner. | <p>A municipal judge may order the fine and costs collected by execution against the defendant’s property in the same manner as in a civil suit. Art. 45.047, C.C.P.</p> |

