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## Liability for criminal acts of employees

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**KNOW YOUR LEGAL OBLIGATIONS**

# Derivative Liability

- *Respondeat Superior* – What does it mean?
  - “Let the master answer”
  - A principal is liable for the torts of his agent in the following situations:
    - (1) when expressly authorized
    - (2) when committed within the scope of his employment and in furtherance of his master's business
    - (3) when the act comes within his implied authority;
    - (4) when ratified by the principal

*See Snow v. De Butts*, 212 N.C. 120, 122, 193 S.E. 224, 226 (1937)

# Direct Liability

- (1) a specific act [of the employee] on which the lawsuit is founded;
- (2) incompetency [of the employee], by inherent unfitness or previous specific acts of negligence, from which incompetency may be inferred;
- (3) either actual notice to the master of such unfitness or bad habits, or constructive notice, by showing that the master could have known the facts had he used ordinary care in oversight and supervision;
- (4) that the injury complained of resulted from the incompetency proved.

*Medlin v. Bass*, 327 N.C. 587, 591, 398 S.E.2d 460, 462 (1990)

# Direct Liability

- Negligent Hiring
- Negligent Supervision/Training
- Negligent Retention

# Practical Considerations—Hiring

- There is no common law duty to do an extensive background check on an employee unless the employer knows facts that would lead a reasonable person to investigate
- Have a hiring policy and FOLLOW it
  - If you have an established policy for your organization and you fail to comply with it, your organization will be potentially exposed to liability

# Direct Liability: Supervision/Training

- Supervision:
  - Generally: Failure to reasonably monitor or control the actions of an employee
  - What is reasonable?
- Training:
  - Generally: Training of an employee fails to prevent the employee from engaging in an act that causes injury
  - What is reasonable?

# Direct Liability: Retention

- What is the employer's obligation upon receiving actual or constructive notice of the employee's behavior?



# Punitive Damages

- What's the difference?
- Compensatory Damages vs. Punitive Damages
  - Compensatory Damages:
    - The objective of compensatory damages is to restore the plaintiff to his original condition or to make the plaintiff whole  
*Watson v. Dixon*, 352 N.C. 343, 347, 532 S.E.2d 175, 178 (2000)
  - Punitive Damages:
    - Are intended to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts  
N.C. Gen. Stat. § 1D-1 (2006)

# Punitive Damages – Cont'd.

- Punitive damages shall not be awarded against a person solely on the basis of vicarious liability for the acts or omissions of another.
  - Punitive damages may be awarded against a person only if that person participated in the conduct constituting the aggravating factor giving rise to the punitive damages;
  - or if, in the case of a corporation, the officers, directors, or managers of the corporation participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages.

N.C. Gen. Stat. § 1D-15(c) (2006)

# Punitive Damages – Cont'd

- Note: A punitive damage award against an employer is not limited to the punitive damages awarded against the employee
- Because it may take a different amount of money to deter or punish an employee-defendant than an employer-defendant, the recovery against the employer is not limited by the punitive damage award against the employee

*Watson*, 352 N.C. at 348, 532 S.E.2d at 178

- Evidence of ability to pay punitive damages in the form of revenue and net worth are admissible.

N.C. Gen. Stat. § 1D-35(2)(i) (2006)

# Case Study

- Wayman v. Accor N. Am. Inc., No. 103,456 (Kansas Court of Appeals Mar. 18, 2011):
- Facts:
  - A guest staying at a hotel was struck by the general manager's vehicle while standing outside of his room.
  - The general manager was intoxicated at the time of the accident and jumped the curb with his vehicle when he was returning from the bar.
  - The general manager lived on the premises and was on 24-hour call. At the time of the accident, a duty manager was performing his duties. The general manager was returning from time off.

# Elements of Derivative Liability

- A principal is liable for the torts of his agent in the following situations:
  - (1) when expressly authorized
  - (2) when committed within the scope of his employment and in furtherance of his master's business
  - (3) when the act comes within his implied authority
  - (4) when ratified by the principal

# Outcome

- The injured guest sued under theories of negligence, vicarious liability, and negligent hiring and supervision
- The motel owner filed for a motion for summary judgment on the claims for vicarious liability and negligent hiring and firing
- The trial court granted the motion for summary judgment, and the injured guest appealed
- The Court of Appeals affirmed the trial court's decision that held as a matter of law that the general manager's actions of going to the bar and driving home while intoxicated were purely personal and outside the scope of his employment, even though he was on 24-hour call.

# Case Study

- B-T Two Inc. v. Bennet, No. A10A1716 (Georgia Court of Appeals Jan. 27, 2011)
- Facts:
  - A party was hosted at a private residence to raise money for a restaurant manager who was leaving work to attend to his sick child
  - Flyers advertising the party were placed at the restaurant and a few employees went to the party wearing their uniforms
  - A fight ensued and one of the employees injured another attendee
  - The restaurant did not pay for any of the expenses or provide food or alcohol for the party. The restaurant received none of the funds raised

# Outcome

- The injured partygoer sued the restaurant for his injuries under respondeat superior and negligence in sponsoring a party with unlimited alcohol without providing security
- The restaurant moved for summary judgment, which the trial court denied. The restaurant appealed
- The Court of Appeals found there was no evidence indicating that the assault was within the scope of the employee's employment or in furtherance of the restaurant's business and reversed the trial court's order.



# Pertinent Factors

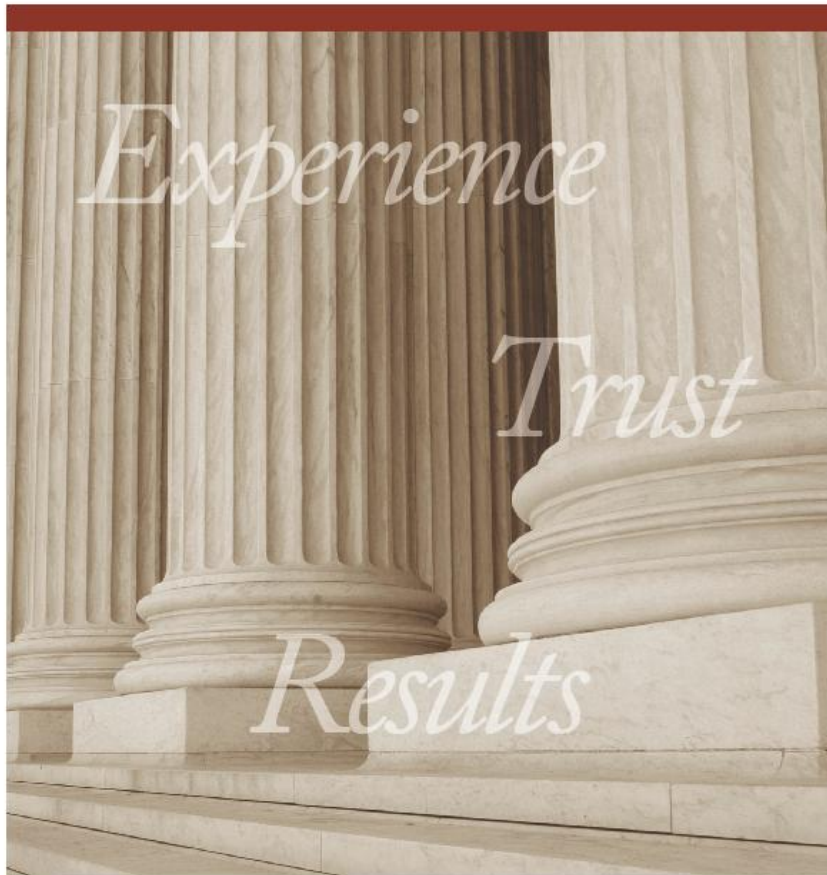
- The restaurant did not own or lease the residence at which the party was held
- The restaurant did not pay for any expenses of the party or provide food or alcohol
- The restaurant did not receive any of the money collected for the departing manager
- The restaurant did not place any signs advertising the restaurant or other promotional materials at the location of the party

# Case Study

- Doe v. Ritz-Carlton Hotel Co. of Del. Inc, No. 11SL-CCd1159 (Mo. Cir. Ct., St Louis County, filed Mar. 22, 2011)
- Facts:
  - Complaint alleges that a child was staying with her family at the hotel when a man went to the front desk and reported his key did not work and requested a key to the room the girl was staying in with her older sister and a friend
  - Allegedly the key was given to the man, which he used to access the room and sexually assault the girl
  - The law suit also names defendant's employer in the action because he was allegedly at the hotel for business purposes

# Elements of Derivative Liability

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# QUESTIONS?

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