## **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, no pet.). 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, no pet.).

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.	Sec. 17A.01, C.C.P.
"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:	Art. 17A.03, C.C.P.

□ a.	associa form a	ourt must summon the corporation or ation. The summons is in the same s a capias. A certified copy of the aint must accompany the summons.	Art. 17A.03 (a)(1-2), C.C.P See <i>TMCEC 2024 Forms Book:</i> Corporate Summons.
🗖 b.	10:00 a	rporation or association has until a.m. on the next Monday after the ay after service to answer.	Art. 17A.03 (a)(3), C.C.P.
🗖 c.	Service must be by a peace officer on the registered agent or a high managerial agent.		Arts. 17A.04 and 17A.05, C.C.P.
🗖 d.	No individual may be arrested upon a complaint filed against a corporation or association.		Art. 17A.03(b), C.C.P.
Appearance:			Arts. 17A.07(a) and 17A.06, C.C.P
<b>□</b> a.	a. The corporation or association must appear through counsel.		
	<b>(</b> 1)	Appearance is for the purpose of entering a plea.	
	□ (2)	Ten full days must elapse after the day of appearance before the corporation may be tried.	
🗖 b.	appear	rporation or association does not in response to a summons, or s but fails or refuses to plead:	Art. 17A.07(b), C.C.P.
	<b>(</b> 1)	It is deemed to be present in person for all purposes;	
	□ (2)	The court shall enter a plea of not guilty on its behalf; and	

□ 2.

	□ (3)	The court may proceed with the trial, judgment, and sentencing.	This is the only instance in a criminal case where a defendant may be tried <i>in absentia</i> . Because a corporation or association cannot be taken into custody pursuant to Article 17A.03(b), C.C.P., it is presumed that such defendants cannot be charged with Failure to Appear (Sec. 38.10, P.C), which requires a showing that a person was lawfully released from custody.
□ c.	respon associa	ing appeared and entered a plea in se to summons, a corporation or ation is absent without good cause at ne during later proceedings: It is deemed to be present in person	Art. 17A.07(c), C.C.P.
	□ (2)	for all purposes; and The court may proceed with trial,	
Crimin	al respon	judgment, or sentencing.	
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□ a.	perform of a co liability entity a office of associa or othe	luct constituting an offense is ned by an agent acting in behalf rporation, an association, a limited y company, or another business and within the scope of the agent's or employment, the corporation, ation, limited liability company, er business entity is criminally sible for an offense defined:	Sec. 7.22, P.C.
	<b>(</b> 1)	In the Penal Code where corporations, associations, limited liability companies, and other business entities are made subject thereto;	Sec. 7.22(a)(1), P.C.
	• (2)	In other statutes where the legislative purpose to impose criminal responsibility on corporations, associations, limited liability companies, and other business entities plainly appears; or	Sec. 7.22(a)(2), P.C.

□ 3.

		(3) In other statutes where solution is imposed, unlegislative purpose not the criminal responsibility of corporations, association liability companies, or obusiness entities plainly	ess a o impose on ns, limited other	Sec. 7.22(a)(3), P.C.
	□ b.	It is an affirmative defense to pr of a corporation, an association, liability company, or another bu entity under Section $7.22(a)(1)$ of that the high managerial agent h supervisory responsibility over to matter of the offense employed diligence to prevent its commiss	a limited siness or (a)(2) aving he subject due	Sec. 7.24, P.C.
□ 4.	Punish	nents upon finding or plea of gui	lty:	Art. 17A.09, C.C.P.
	🗖 a.	Court may sentence the corpora association, limited liability con other business entity to pay a fir amount fixed by the court, not to fine provided by the offense.	npany, or e in an	Sec. 12.51(a), P.C.
	🗖 b.	If an offense provides no specifi the offense is classified as a Clas misdemeanor and the fine is not \$2,000.	ss C	Sec. 12.51(b), P.C.
	□ c.	In addition to any sentence, the may order a corporation, an asso a limited liability company, or a business entity to give notice of conviction to any person the cou appropriate.	ociation, nother the	Sec. 12.51(d), P.C.
	🗖 d.	The clerk must notify the Attorn General's Office.	ey	Sec. 12.51(e), P.C.
		(1) If a defendant is a corporation of a high managerial agent given when the convictifinal and unappealable.	, notice is	Art. 17A.09, C.C.P.
		<ul> <li>(2) The notice of conviction corporation or high mar agent shall include:</li> </ul>		

	<ul> <li>□ (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.</li> </ul>	
	□ (B) Certified copies of the judgment, sentence, and complaint on which the judgment and sentence were based.	Art. 17A.08, C.C.F This may be constr deferred dispositio
<b>□</b> e.	The benefits of adult probation laws shall not be available to corporations or associations.	
Enfor	cement of judgment:	
<b>□</b> a.	No individual may be arrested upon judgment or sentence entered against a corporation or association.	Art. 17A.03(b), C.
🗖 b.	When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged after:	Sec. 43.01, C.C.P.
	$\Box$ (1) The amount has been fully paid;	

 $\Box$  (2) The execution has been fully satisfied; or

□ 5.

 $\square$  (3) The judgment has been satisfied in any other manner.

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C.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. 45.047/45A.263, C.C.P.