

**440 LIABILITY FOR ACTS OF ANOTHER: ACTS OF AGENT OR SERVANT:  
STRICT LIABILITY CASES**

[INSTRUCTION WITHDRAWN]

**COMMENT**

Wis JI-Criminal 440 was originally published in 1966 and reviewed and republished with an updated comment in 1987. The withdrawal of the instruction was approved by the Committee in May 1995.

This instruction dealt with the individual liability of a person for crimes committed by the person's employee when the crime is committed within the scope of employment. Though such situations will commonly arise in the corporate setting, the instruction dealt with the criminal liability of individuals, not the liability of corporations. Regarding the latter, see Wis JI-Criminal 420.

A footnote to the 1966 version of the instruction indicated that the "instruction is intended for those cases where, by statutory language or by judicial interpretation thereof, an employer is held strictly liable for the acts of an agent or servant." Because it is not clear when such strict liability situations exist, the Committee decided the instruction should be withdrawn.

The original instruction was based on an old line of cases that had recognized this type of liability in liquor regulation cases. See Olson v. State, 143 Wis. 413, 127 N.W. 975 (1910); Scott v. State, 171 Wis. 487, 177 N.W. 615 (1920); and State v. Grams, 241 Wis. 493, 6 N.W.2d 191 (1942). The rule in these cases was reaffirmed in State v. Beaudry, 123 Wis.2d 40, 365 NW.2d 593 (1985). Beaudry affirmed the conviction of the agent of a corporation for a liquor law violation committed by a bartender without the defendant's knowledge and directly contrary to the defendant's instructions.

As the court noted in Beaudry, it was approving a standard for both "vicarious" and "strict" liability: liability is "vicarious" in that it is derived from a violation directly committed by someone else; it is "strict" in the sense that no mental state is required. The court cited several factors in support of its conclusion:

- 1) the sale of alcohol beverages is highly regulated by statutes creating a strict liability "public welfare" offense;
- 2) the offense is a misdemeanor, punished by a fine and relatively short period of imprisonment;
- 3) it will often be difficult to prove that the agent was negligent in hiring or supervising the employee, or knew about or authorized the employee's violation of the law; and,
- 4) the number of prosecutions may be large so that the legislature would want to relieve the prosecution of the task of proving the employer knew of or authorized the violation or was negligent.

[Beaudry also referred to JI 440, apparently with approval, as to the definition of "scope of employment."]

Shortly after the Beaudry case was decided, § 125.115 was created. [See 1985 Wisconsin Act 47, effective date: November 5, 1985.] It provides as follows:

**125.115 Responsibility for commission of a crime.**

- (1) A person may be convicted of the commission of a crime under this chapter only if the criteria specified in s. 939.05 exist.
- (2) This section does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

It is believed that the enactment of this statute was intended to "overrule" the Beaudry decision, as far as criminal violations of the alcohol beverage laws are concerned.

Because the creation of § 125.115 eliminated strict liability for actions of an agent in the single situation where it had clearly been recognized, the Committee concluded that the instruction should be withdrawn.