

The chief executive officer (CEO) of a company that operated a knitting mill delegated all operational decision-making to the supervisor of the mill. The child labor laws in the jurisdiction provide, "It is a violation of the law for one to employ a person under the age of 17 years for full-time labor."

Without the CEO's knowledge, the supervisor hired a number of 15- and 16-year-olds to work at the mill full time. He did not ask their ages and they did not disclose them. The supervisor could have discovered their ages easily by asking for identification, but he did not do so because he was not aware of the law and believed that company policy was to hire young people.

If the statute is interpreted to create strict liability and the CEO is convicted of violating it, is his contention that his conviction would violate the Constitution correct or incorrect?

- A. Correct, because criminal liability is personal and the knitting mill, not the CEO, is the employer of the children.
- B. Correct, because it is a violation of due process to punish without a voluntary act.
- C. Incorrect, because he was in a position to exercise control over the hiring of employees for the knitting mill.
- D. Incorrect, because regulatory offenses are not subject to due process limitations.

## Explanation:

### Comparing theories of criminal liability

Theory	Mens rea (criminal mind)	Actus reus (criminal act)
Direct liability	Defendant has mens rea	Defendant performs actus reus
Vicarious liability	Defendant's agent has mens rea	Agent performs actus reus under defendant's control
Strict liability	No mens rea requirement	Defendant performs actus reus

A defendant can be:

**directly liable** for a criminal act that he/she **personally performed** or **vicariously liable** for a criminal act **performed by another**—often an employee.

But for a defendant to be convicted based on vicarious liability, **due process** requires proof that the **defendant had control** over the other's conduct. Such proof exists here because the CEO was in a position to exercise control over the supervisor's hiring practices. As a result, the CEO's vicarious liability for the supervisor's criminal hiring does not raise any due process or other constitutional concerns.

**(Choice A)** Criminal liability often arises when the defendant personally commits a criminal act—but not always. As in this case, a defendant can be criminally liable for failing to prevent a criminal act that an agent (eg, the supervisor) committed while under the defendant's control.

**(Choice B)** Due process *allows* punishment without a voluntary act on the part of the defendant when, as here, the defendant had control over and is being held vicariously liable for another's conduct.

**(Choice D)** Regulatory offenses are **strict liability** crimes that are designed to protect the public welfare (eg, speeding, public intoxication). These offenses *are* subject to due process limitations—eg, the punishment must fit the crime. And since regulatory offenses require no proof of fault, they generally are only punishable by fine.

### Educational objective:

Due process requires proof that the defendant had control over another's conduct to hold the defendant vicariously liable for that person's criminal act.

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