

Answers to self-test questions

Chapter 16

1. What is a principal offender?

The principal is the person who performs or causes the actus reus of a substantive criminal offence with the necessary mens rea.

2. What is a secondary party?

A secondary party (or accessory or accomplice) may assist with the commission of the principal offence in a number of ways, but he does not directly cause the actus reus.

3. Explain how a secondary party might be liable for an offence committed by the principal offender?

A secondary party may be liable for aiding, abetting, counselling or procuring the commission of an offence (by virtue of s.8, Accessories and Abettors Act 1861), or for participating in the commission of a criminal offence with the intention to encourage or assist the commission of the offence (by virtue of *R v Jogee* (2016)).

4. How much knowledge does an accessory need? Use case law in your answer.

The mens rea of secondary liability requires proof of the following:

- (i) the defendant intended to do the act which assisted or encouraged the principal offence, and
- (ii) he knew the essential matters which constitute the principal offence: *Johnson v Youdon* (1950).

Knowledge of the essential matters of the offence means that the prosecution must prove that the defendant knew the circumstances which form the actus reus of the offence which might be committed, and that he foresaw that the principal might act with the requisite mens rea of the offence. In *Bainbridge* (1960), the Court of Appeal held that it is not enough to show that the defendant knew that

the equipment would be used for “some illegal venture”, such as disposing of stolen property. However, it is also unnecessary to prove that the defendant knew that the particular crime would be committed, on the particular date and at the particular premises. This has been confirmed more recently in *Bryce* (2004).

5. Can a secondary party still be liable when the principal has been acquitted? Use case law in your answer.

Yes. Liability of a secondary party is not dependent upon the conviction of the principal. Where the actus reus of the principal offence is present, but the principal is acquitted, a secondary party may be liable for aiding, abetting, counselling or procuring the principal offence: *Cogan and Leak* (1975).

6. Can a secondary party be tried for a more serious offence than principal? Use case law in your answer.

Yes. The House of Lords has stated (*obiter*) that secondary parties do not benefit from a special defence which may be available to a principal. However, the secondary party cannot also avail himself of this defence and will remain liable for aiding, abetting counselling and procuring murder: *Howe* (1987).

7. Explain the operation of the doctrine of joint enterprise before the decision in *R v Jogee*?

Where two or more people, sharing a common purpose, embarked upon the commission of a criminal offence, they were deemed to be part of a joint enterprise. All parties sharing a common purpose to commit an offence were liable for any offence committed in pursuance of that common purpose. If one person in the joint enterprise departed from the common purpose, the other participants were not liable for any unforeseen offence which that person commits. However, any of the participants who foresaw that the principal might commit the actus reus of an offence with the relevant mens rea would be liable for the offence committed by the principal: *Powell and Daniels; English* (1997).

8. Explain the effect of the decision in *R v Jogee* on accessorial liability?

This case reversed over 30 years' worth of legal precedent relating to the *mens rea* required in order to be convicted as an accessory to a crime – it held that the Privy Council took a wrong turn in the case of *Chan Wing-Siu* (1985) by equating foresight with intention. The case restricts the scope of accessorial liability, limiting liability to defendants who participate in the criminal offence with the intention to encourage or assist the commission of the offence. To be convicted, it must be proved that D2 participated in the crime by assisting or encouraging the commission of the offence, and that he intended to encourage or assist D1 to commit the crime, acting with whatever mental element the offence requires of D1. In order to be guilty as an accessory to murder, the defendant must intend to assist the intentional infliction of grievous bodily harm at least. The Court disapproved of the term 'parasitic accessorial liability' and stated that the expression 'joint enterprise' was 'not a legal term of art'.

9. Explain how a defendant may withdraw his participation. Use case law in your answer.

Where the defendant wishes to withdraw his participation before the offence has begun, he may do so by communicating his withdrawal: *Grundy* (1977). However, where the defendant decides to withdraw after the offence has begun, he must do more than simply communicate his intention to play no further part in the offence: *Becerra and Cooper* (1976). Where violence has arisen spontaneously, unequivocal communication of withdrawal is generally also required: *Robinson* (2000).