

## W201 The Individual and the State

### Study notes on accomplices

#### General

A principal is the perpetrator of the offence (the person who strikes the blow or appropriates the property).

If more than one person perpetrates the offence (ie two men strike the victim) they are co-principals.

Other participants in crime are accessories or accomplices (ie the look out or the getaway driver).

In practice the distinction is frequently not significant as accomplices are charged and sentenced as principals. The mens rea required of each is however different.

#### Accomplice liability

##### Actus reus

An accomplice must "aid abet counsel or procure" Section 8 Aiders and Abettors Act 1861 and Section 44 Magistrates Courts Act 1980. This can be before the crime occurs or at the scene.

A practical problem which can arise is when does a bystander become an accomplice?

There must be a) a prior arrangement or b) encouragement.

Mere presence was held to be insufficient **R v Clarkson** 1971 Court Martial AC (three men watched rape giving neither physical assistance or verbal encouragement) **R v Bland** 1988 C A (woman living with drug offender) **R v Willett** 2010 C A (accused was passenger in car driven by brother as both tried to escape after being disturbed while attempting to steal - brother knocked down and killed victim).

Contrast attending an illegal event **Wilcox v Jeffrey** 1951 (attending illegal performance of American musician) or being under a duty to act **Du Cros v Lamborne** 1907 (owner of motor vehicle failing to stop driver speeding) **R v Russell** 1987 (parent fails to intervene when other parent illtreats child) **Tuck v Robson** 1970 (publican failed to stop customers drinking after hours). All these resulted in accomplice liability.

There is no need for any mental link between principal and accomplice in a case of procuring **AG Reference (No 1 of 1975)** 1975 C A (accused laces friend's drink who then drives over the limit - charged with aiding and abetting counselling and procuring

the excess alcohol offence - absence of encouragement to drive or shared intention no defence where procuring is alleged). However there must be a causal link.

In contrast in cases not involving procuring (ie in cases of aiding abetting and counselling) there will usually be a mental link but there need be no causal link **R v Calhaem** 1985 C A (accused hires hitman to murder love rival – hitman claims he never intended to carry out murder but went berserk and did so because victim screamed).

As long as the actus reus of the principal offence is committed the acquittal or non prosecution of the principal is no bar to conviction of the accomplice **DPP v K & C** 1977 Div Ct (two girls could be accomplices to the rape of a third girl by a boy who they procured but who lacked mens rea due to age). If however there is no actus reus there is no accomplice liability **Thornton v Mitchell** 1940 (bus driver relying on conductor's negligent signals - no careless driving by bus driver so no liability for conductor for aiding and abetting).

If an innocent agent is used the accused is usually charged as principal (eg burglar sends child through window) an exception is rape or sexual offences where it is usual to charge the accused as an accomplice **R v Cogan and Leak** C A 1976 (man forces wife to have sexual intercourse with friend - friend acquitted as not aware of absence of consent - husband convicted as accomplice to rape) **R v Bourne** 1952 C A (accused forces wife to commit buggery with dog - convicted as accomplice).

Victims of sexual offences can not be charged as accomplices as the offences are there to protect them **R v Tyrell** 1894 CCR (usi) and **R v Whitehouse** 1977 (incest).

Police officers can be accomplices if they initiate the commission of crimes (eg undercover officer trying to catch thief) but not if the crime is already arranged before the police are involved **R v Sang** 1979 Lords.

## **Mens rea**

There must be: **intention to aid** and **knowledge of the circumstances**

This was set out in **National Coal Board v Gamble** 1959 Div Ct (weighbridge operator handed over ticket to driver of overloaded lorry knowing the driver was going to use it on a road - operator convicted of aiding and abetting offence of driving an overloaded lorry)

### **intention to aid**

The accused must intend to provide encouragement which must be 'wilful' **R v Clarkson** 1971 (three men watch rape). Intoxication can affect intent here as in specific intent cases.

### **knowledge of the circumstances**

An accomplice must know “the essential matters which constitute that offence” **Johnson v Youden** 1950 (accused need not know those matters constitute a crime).

### **Strict liability offences**

Mens rea is still required for an accomplice (even though the principal needs none) **Ferguson v Weaving** 1951 Div Ct (manager of pub charged with aiding and abetting consumption of liquor outside permitted hours - no evidence manager knew of consumption - appeal allowed).

Negligence is not enough for an accomplice - knowledge is required **Callow v Tillstone** 1900 Div Ct (vet negligently issued certificate for carcass - butcher convicted of exposing for sale meat unfit for human consumption - vet acquitted of aiding and abetting).

### **How much does the accomplice need to know?**

The accomplice must know ‘a crime of the type in question was intended’ ie knowledge of the specific type of crime and not just an illegal act **Maxwell v DPP for NI** 1978 Lords (knowledge of bomb attack covered offences of possessing explosive and using it to cause injury or damage).

An accomplice can be guilty of a more serious offence than the principal eg if the accomplice has the more serious mens rea **R v Howe** 1987 Lords (conviction for procuring murder upheld where principal convicted of reduced charge of manslaughter).

### **Joint enterprise**

The ordinary principles of accomplice liability will apply here but the mens rea requirement of “**knowledge** of the circumstances” has been replaced by a less rigid test of **foresight** or **contemplation** of the circumstances.

This represents a practical approach by the courts as a strict approach requiring knowledge would not always work. When the joint enterprise or joint venture is planned no one may know for certain how future events will turn out and what criminal acts or criminal intentions will result.

Instead courts have tended to ask whether an accused foresaw or contemplated the essential matters. The following are examples.

In the absence of an **express** agreement between the parties there can be liability for a ‘**tacit** agreement’ **R v Slack** 1989 C A ( one burglar handed a knife to the other burglar “to threaten the old lady with if she starts screaming” - her throat was cut –tacit agreement sufficient).

Realising the principal **might** commit an offence (without an express or tacit agreement)

and continuing to participate can be enough **R v Hyde** 1990 C A.

This means in a joint enterprise situation that in terms of mens rea an accomplice can be convicted if the accomplice realises the principal **might** kill with intent to do so or to cause GBH **R v Powell** 1998 Lords (three men call on drug dealer - one of them shoots him). The court justified this outcome which is harsh on the accomplice on the basis that the public needed protection against criminals operating in gangs.

In **R v Rhaman** 2009 Lords (assault with blunt weapons – victim stabbed to death) the court reformulated the test on the basis of the accomplice’s foresight of what the principal might **do** rather than foresight of the principal’s **intention**.

In **R v A, D, C and B** 2010 C A Rhaman was considered and explained on the basis that foresight of what the principal might do was a step on the way to proving intent to kill or to cause GBH. The court did not treat Rhaman as diluting the requirement of accomplice mens rea set out in Powell.

### **Going beyond the plan**

Accomplices **are** liable for the unexpected consequences of their plan **R v Lovesey** 1970 C A (common design to use unlawful violence resulted in unexpected death - manslaughter upheld).

However this does not apply where the principal goes beyond the scope of the plan or common design **R v Anderson** 1966 C A (common design to assault - principal produces knife and stabs victim).

The accomplice escaped liability for murder when **Anderson** was applied in **R v English** 1998 Lords (enterprise involved causing injury to police with wooden posts - knife used to stab police officer to death). **English** was followed in **R v Uddin** 1999 C A (plan to use sticks and bars – flick knife produced).

In **R v Rhaman** 2009 Lords (assault with blunt weapons – victim stabbed to death) the court qualified the test for going beyond the plan slightly by requiring production by the principal of a more lethal weapon than any which the accomplice contemplated the principal **or any other participant** may be carrying.

### **Finally**

Finally where the parties are carrying out the agreed plan but with different levels of mens rea (ie the principal has the mens rea for murder but the accomplice only has the mens rea for manslaughter) then it is open to a court to convict the accomplice of manslaughter **R v Stewart** 1995 C A approved in **R v Gilmour** 2000 C A (Northern Ireland) and **R v Roberts** 2001 C A.

Statutory reform of accomplice liability in homicide cases following the Law Commission Report No 304 of 2006 and a Government Consultation Paper in 2008 is waiting for government proposals.

### **Withdrawal from a plan**

Before the crime occurs words alone may be enough if communicated to the principal **R v Grundy** 1977 C A (accused gave verbal assistance only and not physical assistance).

Once the crime has commenced withdrawal requires 'timely communication of intention to abandon the plan' to the principal **R v Becerra** 1975 C A (saying 'Let's go' and jumping out of a window when a burglary was disturbed was **not** enough - the court suggested the accomplice should have stayed and physically stopped the principal from using a knife).

Subsequent cases have depended very much on their facts. Exceptionally if there is a spontaneous outbreak of violence (with no pre-planning) so it is not practicable or reasonable to communicate then an accused can withdraw while the crime takes place **R v Mitchell** 1999 C A.

In contrast a further limitation on withdrawal at this stage was imposed in **R v Robinson** 2000 C A (following **Becerra** and distinguishing **Mitchell**) (accused struck the first blow then stood back but later intervened to stop the attack - the Court held that encouragement once given cannot be withdrawn once the offence has been commenced).

Sometimes the facts of a case can be viewed as falling into more than one category. In **R v Rafferty** 2008 C A the court considered the facts both as the end of one joint venture and the start of another (a novus actus interveniens which broke the chain of causation) and a possible withdrawal. The accused had joined in an attack on a victim on a beach. He had taken the victim's debit card and gone to get cash. In his absence his former accomplices drowned the victim in the sea. The Court of Appeal eventually dealt with the case not as a withdrawal but as going beyond the scope of the plan – the drowning was of a fundamentally different nature applying **R v English**.

### **Summary**

The main difference between principal and accomplice is in the mens rea required:

- for an offence requiring mens rea

the principal needs full mens rea (eg in murder intent to kill or cause GBH)

an accomplice only needs knowledge of the existence of the principal's mens rea (ie he need not intend to kill or inflict GBH yet still faces a mandatory life sentence)

- for a strict liability offence

a principal needs no mens rea

an accomplice must have mens rea (intention to aid and knowledge of the circumstances).