

SECONDARY LIABILITY

- Difference in Title

A Principle Offender is someone that actual commits the crime.

Joint Principles are those people that are regarded as having equal liability for the crime.

Secondary Parties are those that were involved in the planning of an offence.

o Coney (1882)

Rule: there is no liability for being a passive spectator. Some active steps must be taken by word or action.

- Mental Element

o 7(1b)

The mental element is express as it states that the person does the act 'for the purpose of'.

o 7(1c-d)

The mental element is implied, and Beck v R provides that the term aid means to knowingly aid.

o Ancuta v R (1991)

Facts: convicted of unlawful possession of a motor vehicle because he did not know which specific car the identification plates would be put on.

Rule: all that is needed is knowledge of the intention to commit a crime of the type committed.

o DPP (Northern Ireland) v Maxwell (1978)

Facts: getaway driver of a terrorist group that used a pipe bomb to destroy a catholic pub

Rule: if one person aids another, knowing an offence is to be committed, he is liable for any of the alternatives that were contemplated

o Witsen (2008)

Facts: arranged for 2 men to come to his house and beat up his roommate to repay a drug debt. He came into the room with blood everywhere and was told to hold him down while one of the men hit him on the head with a rifle twice (murder)

Rule: it would not be enough if he knew of the possibility of causing GBH or death he had to know.

- Aiding

o Beck v R (1989)

Facts: B and her partner abducted, raped, and killed a young girl. She said at trial that she planned the abduction and rape, but didn't know the killing would happen. She did not participate but was at the scene.

Rule: Voluntary and deliberate presence during the commission of a crime without opposition or real dissent may be evidence of wilful encouragement or aiding... a calculated presence or a presence from which opportunity is taken can provide positive encouragement and support to a principle offender.

o Randall and Farmer v R (2004)

Facts: R was part owner of a nightclub and he raped a woman on F's desk while F stood there laughing.

Rule: F was convicted as an aider/abettor as he allowed it to continue in his office and had encouraged it by laughing.

- Counselling/Procuring

o Counselling

Counselling is encouraging (beforehand) by word or deed the commission of an offence

o Procuring

Procuring is intentionally causing the commission of an offence (hiring a hit man)

- Common Purpose Rule

Two or more people that have the common intention to prosecute an unlawful purpose and in the prosecution of that purpose, the offence committed was a probable consequence.

o Stuart v R (1974)

Rule: the issue is not whether the accused was aware that its commission was a probable consequence as the test is objective and not subjective.

- Extended Counselling Rule

A person counsels the offender committed the offender to commit an offence and an offence after the counsel that was a probable consequence of the carrying out of the counsel

o Darkan (2006)

Rule: probable means more than a real or substantial possibility or chance.

- Withdrawal

You can withdraw from secondary participation before the offence is committed (common purpose rule) or by undoing the contribution (R v Menniti (1985) – aiding, counselling, procuring)

DEFENCES

- Lack of Will (23(1a))

The defence of 'lack of will' means that the relevant physical actions were not under the mental control of the accused.

o Presumption

▪ Bratty v A-G for Northern Ireland (1963)

Rule: it is presumed that a person of normal mental capacity has the ability to control ones actions (voluntary).

o Murray v The Queen (2002)

Rule: A reflex action needs to be distinguished from a spontaneous action, just because they act quickly does not mean that it was unwilling.

o Ugle v The Queen (2002)

Facts: victim died from knife wound, he went to the victim's house after an altercation between the victim and U's friend. The victim had used a cricket bat in this disturbance so U brought a kitchen knife. Victim struck him with the bat causing him to lose balance and put his hand

up to push the victim away, after not realising he had stabbed him

Rule: trial was reordered for the jury to consider this as an unwilling action caused by an external physical force

o Automatism

Automatism is where the actions of the accused are separate from the conscious mind.

You must have evidence of dissociation, that might be glazed eyes, dilated pupils etc. rocking back and forth etc.

o Cooper v McKenna (1960)

Facts: dangerous driving after having a concussion at a football match

Rule: posttraumatic automatism can amount to an excuse to a dangerous driving charge, though it was one that requires close scrutiny.

- Accident (23(1b))

o Taiters (1997)

Rule: possible consequences are those that are no more than remote or speculative

o Egg Shell Skull Rule

▪ R v Steindl (2002)

Rule: is not restricted to naturally occurring abnormalities (plastic eye)

o R v Hodgetts and Jackson (1990)

Rule: the defences of Lack of Will and Accident do not extend to negligent related offences

- Mistake of Fact (24)

o Honest

A purely subjective test.

o Reasonable

A purely objective defence, it was an objectively reasonable mistake in the circumstances

▪ R v Wilson (2008)

Rule: it is the accused mistaken belief that is central to the defence, and the question is where there were reasonable grounds for the accused to hold that belief.

▪ Aubertin v WA (2006)

Rule: while it is largely objective, it does or can incorporate subjective features of the accused.

▪ R v Mrzljak (2005)

Rule: the test of reasonableness is what the accused reasonably believed not what a reasonable person believed. Therefore personal characteristics can be taken into account to determine what is reasonable, these include intellectual impairment, psychiatric disorders, and language barriers.

o Not criminally responsible to any greater extent

A successful claim under s 24 will not always result in a complete acquittal because it only provides that the person is to be treated as if the facts had been as they thought that they were.