

Think box 5.1

1. V has been shot and killed by either P or A but the prosecution cannot prove which of the two pulled the trigger and which one hired the other as hitman. What offence has each committed, if any?
2. Which of the following represents either aiding or abetting by A and for which offence will A be liable?
 - a.) P tells A that he plans to murder V. A says he thinks it a very good idea. P kills V the following week.
 - b.) A finds P violently kicking V in the head. A shouts encouragement, smashes a bottle, hands it to P and then leaves the scene. P continues the attack with the bottle. V dies.

Answer guidance

1. Gianetto [1997] 1 Cr App R 1- both will be convicted of murder. The mode of participation is irrelevant provided there is evidence against both as either accessory or a principal.
2. Abetting: encouragement. A intentionally encouraged P to commit an offence: guilty of murder.

Aiding: assisting by handing P the bottle. Abetting: encouragement. A intended his shouting to encourage P knowing that P was committing an offence. Neither presence nor causation are necessary provided A intended to aid or abet. If so, A will be liable for murder.

Think box 5.2

Which of the following represents either counselling or procuring by A and for which offence will A be liable?

1. A generous host (A) gives too much alcohol to a guest (P):
 - a) hoping, wrongly, that P will be sensible enough to stay the night and not drive home
 - b) knowing P must drive home.In each case P is stopped, charged and convicted of driving with excess alcohol.
2. A emails P information about the security system of a shop which P wishes to burgle on the basis of which P attempts the burglary but is arrested on site.
3. A asks P, a nine-year-old boy, to slip through a narrow window of a house and to unlock the front door from the inside so that A can enter in order to steal.

Answer guidance

1. a. A may have caused P's offence but was reckless. This is insufficient for procuring: *Blakely & Sutton v Ch. Const. of West Mercia* 1991.
b. A intentionally causes P's offence. Guilty of procuring driving with excess alcohol.
2. A has counseled P's offence of burglary (contact is necessary but not presence). P has committed burglary.
3. P is an innocent agent. A becomes principal offender to burglary as procurer.

Think box 5.3

A sells P a knife which A realizes P might use to inflict serious harm. P uses the knife to kill. What offence has A committed?

Answer guidance

To become an accessory to murder it must be proved that:

- A intends to do the act which assists or encourages,
- that A must intend the act to assist or encourage P (*Gamble*) and
- that intention requires knowledge but not purpose that an offence might be committed (cf: *Gillick*) and
- knowledge that the assistance is capable of assisting. (*Bryce*).

If there is proof of all four, A is accessory to murder even though he only knew of a risk of GBH.

Think box 5.4

1. A sells P a gun believing that P will use it to kill. P uses it to kill on several subsequent occasions. Is A liable for all murders?
2. A sells P an iron bar believing that P will use it in a burglary or robbery. P uses it to commit murder. Is A liable?
3. A lends P a crowbar for a burglary knowing that there is a risk that P might use it to attack the occupier (V) if he is disturbed. P is disturbed during the burglary and hits V around the head causing serious injury from which V then dies.

Answer guidance

1. Yes according to the Law Commission because A knows the particular offence P intends to commit.
2. No – not one of a range of offences contemplated by A.

3. P will be guilty of murder as principal offender. A will be guilty of murder as accessory for he intended to assist or encourage P to commit the principal offence knowing of a risk that P would intentionally inflict serious harm or kill. The same result would follow even if A had stipulated that the crowbar was being lent on condition that P was not violent.

Think box 5.5

A and P burgle the house of an old man. A gives P a spade with which to break down the door. A then waits in the getaway car. P is disturbed during the burglary and kills the old man by hitting him over the head with the spade. Has A committed murder?

Answer guidance

After Powell, it all depends on whether A foresaw a risk of P intentionally inflicting really serious harm or killing with the spade (i.e.: that P might do so). If so, A is guilty of murder. If not, then liability will be less. You need to read the next section in order to discover their alternative offence.

Think box 5.6

What offence has A committed in the following?

1. A and P agree to attack V by fist-fight, A foreseeing non-life-threatening harm. P produces a knife and stabs V in the heart, killing him.
2. A and P agree to knee-cap V by shooting him in the leg. But:
 - (a) P shoots V in the head
 - (b) V dies from knee-capping.
3. Do you think it morally right that A should escape liability for the more serious offence in all of the above?

Answer guidance

1. A would probably not be liable for anything because P would have deviated from the joint venture in an unforeseen way. Anderson & Morris, English, Uddin.
2. a. *Lord Hutton in English: not guilty of murder.*
b. *Guilty of murder.*

Think box 5.7

Which of the above categories, (a)–(c) applies to the following?

1. A, a man, procures X, aged 9, to commit a burglary.
2. P is threatened with violence by A unless he injures V.

Answer guidance

1. This is the second category (b) above. A has procured the offence. As an innocent agent, X is legally incapable of committing a crime. But D would remain liable as procurer to burglary.
2. This is the first category (a) above. P has the defence of duress. A will be guilty of assault.